

**A Thesis Submitted for the Degree of PhD at the University of Warwick**

**Permanent WRAP URL:**

<http://wrap.warwick.ac.uk/132949>

**Copyright and reuse:**

This thesis is made available online and is protected by original copyright.

Please scroll down to view the document itself.

Please refer to the repository record for this item for information to help you to cite it.

Our policy information is available from the repository home page.

For more information, please contact the WRAP Team at: [wrap@warwick.ac.uk](mailto:wrap@warwick.ac.uk)

# **Constitution-making and Democratization:**

## **A Comparative Analysis of Tunisia and Egypt after the 2010/11 Uprisings**

Tereza Jermanová

A thesis submitted in partial fulfilment of the requirements  
for the degree of  
Doctor of Philosophy in Politics and International Studies

University of Warwick  
Department of Politics and International Studies  
September 2018

# Table of Contents

<b>List of Figures and Tables .....</b>	<b>iii</b>
<b>Acknowledgements.....</b>	<b>iv</b>
<b>Abstract.....</b>	<b>vi</b>
<b>List of Abbreviations.....</b>	<b>vii</b>
<b>1. Introduction .....</b>	<b>1</b>
1.1 Setting the Scene: Constitutional Agreement and International Assistance for Constitution-makers.....	6
1.2 Constitution-making and Democratization.....	14
1.2.1 Democratization Scholarship .....	15
1.2.2 Constitution-making Scholarship .....	20
1.3 Contributions .....	22
1.4 Research Design .....	24
1.5 Chapter Outline.....	26
<b>2. Literature Review and Theoretical Framework: Constitution-making Processes, their Design, and Democratization.....</b>	<b>31</b>
2.1 Constitutions as Explanatory Variables and Outcomes.....	32
2.2 Constitution-making Processes at the Centre of Scholarly Inquiry.....	37
2.2.1 Constitution-making Design, Inclusiveness, and Democracy.....	42
2.2.2 Constitution-making and Democratization .....	47
2.2.3 Limits of the Scholarly Literature on Constitution-making.....	50
2.3 The Role of Inclusive Constitution-making Design during Democratization: Theoretical Framework.....	54
2.3.2 Alternative Explanations of Constitutional Agreement .....	59
2.3.3 Origins of Inclusive Constitution-making Design.....	63
2.4 Conclusion .....	70
<b>3. Concepts, Methods and Data .....</b>	<b>72</b>
3.1 Defining the Context: Democratization.....	72
3.1.1 Democracy.....	73
3.1.2 Democratic Transition.....	76
3.1.3 Democratic Consolidation.....	79
3.2 Defining Actors: Political Parties of the Anti-authoritarian Coalition .....	81
3.3 Defining the Outcome: Constitutional Agreement.....	83
3.3.1 Overall Constitutional Agreement.....	84
3.4 Defining the Main Explanatory Factor: Constitution-making Design and its Inclusiveness.....	90
3.4.1 Substantive, Formal and Perceived Inclusiveness.....	93
3.4.2 Operationalising Inclusiveness.....	96
3.5 Origins of Constitution-making Design.....	100
3.6 Methods, Case Selection, and Data .....	102
3.6.1 Method and Case Selection .....	102
3.6.2 Data .....	106
3.6.3 Ethical Considerations.....	117
3.7 Conclusion .....	120
<b>4. Democratic Transitions and Anti-authoritarian Coalitions.....</b>	<b>122</b>
4.1 Democratic Transitions in Tunisia and Egypt .....	126
4.1.1 Tunisia: From Kasbah Square to Electing the National Constituent Assembly. ....	127
4.1.2 Difficult Transition in Egypt.....	131

4.2 Anti-authoritarian Coalitions in Tunisia and Egypt.....	138
4.2.1 Anti-Ben Ali Coalition in Tunisia.....	139
4.2.2 Anti-Mubarak Coalition in Egypt.....	152
4.3 Conclusion .....	163
<b>5. Constitutional (Dis)Agreement .....</b>	<b>165</b>
5.1 Constitutional Agreement in Tunisia.....	168
5.1.1 Agreement in the Making.....	171
5.1.2 Summary .....	183
5.2 Constitutional Disagreement in Egypt.....	185
5.2.1 Disagreement in the Making .....	188
5.2.2 Summary .....	198
5.3 Conclusion .....	200
<b>6. Constitution-making Design and Inclusiveness.....</b>	<b>203</b>
6.1 Increasingly Inclusive Constitution-making Design in Tunisia .....	205
6.1.1 Main Constitution-making Channels.....	206
6.1.2 Formal, Substantive, and Perceived Inclusiveness.....	219
6.1.3 Summary .....	230
6.2 Limits to Inclusiveness in the Constitution-making Design in Egypt .....	231
6.2.1 Main Constitution-making Channels.....	232
6.2.2 Formal, Substantive, and Perceived Inclusiveness.....	241
6.2.3 Summary .....	252
6.3 Conclusion: Inclusiveness of Constitution-making Design and Constitutional (Dis)Agreement in Tunisia and Egypt.....	253
<b>7. Origins of Constitution-making Design .....</b>	<b>258</b>
7.1 Explaining the Origins of Inclusive Constitution-making Design in Tunisia .....	261
7.1.1 Deciding to Elect the National Constituent Assembly.....	262
7.1.2 Setting the Electoral System and NCA Approval Mechanisms .....	264
7.1.3 Changes in Inclusiveness: Consensus Commission .....	270
7.1.4 Availability, Values, and Distribution of Power .....	273
7.2 Explaining Limits to Inclusive Constitution-making Design in Egypt .....	275
7.2.1 Early Debates about Constitution-making Design and the 30 March Constitutional Declaration.....	276
7.2.2 Determining the Selection Criteria for the Constituent Assembly.....	281
7.2.3 Availability, Values, and Distribution of Power .....	284
7.3 Conclusion .....	285
<b>8. Conclusion.....</b>	<b>288</b>
8.1 Inclusive Design and Constitutional Agreement in Tunisia and Egypt.....	292
8.1.1 Different Designs, Different Outcomes.....	294
8.1.2 Limited Design Choices and the Problem of Endogeneity .....	298
8.1.3 Alternative Explanations of Constitutional Agreement .....	301
8.2 Contributions to Literature .....	307
8.3 Limitations and Future Research Avenues .....	310
8.4 Final Reflections.....	312
<b>Appendix I. Constitution-making and Transition Timeline, Tunisia .....</b>	<b>314</b>
<b>Appendix II. Constitution-making and Transition Timeline, Egypt.....</b>	<b>315</b>
<b>Appendix III. List of Interviews .....</b>	<b>316</b>
<b>Bibliography .....</b>	<b>318</b>

**Word count:** 78 847

## **List of Figures and Tables**

Figure 1. Theoretical model

Table 1. Results of the 2011 NCA elections in Tunisia

Table 2. Results of the 2011/12 PA elections in Egypt

Table 3. Tunisian parliamentary blocs in February 2012 (as initially composed) and in December 2013

Table 4. Distribution of seats in the main constitution-making channels in Tunisia

Table 5. Composition of the second CA in Egypt

## Acknowledgements

This thesis could not have been written without the many Tunisians and Egyptians standing shoulder to shoulder against the injustice that dictators Ben Ali and Mubarak inflicted on their countries. I was in Paris in December 2010 when the first demonstrations erupted in Tunisia's interior, and I listened, moved to tears, fascinated by their accounts that were broadcast on the French radio station, RFI. It was during those days that my own life also took an unexpected turn, a turn that symbolically for me is completed by the submission of this thesis. In the years that followed those first demonstrations in Tunisia and Egypt, I dedicated myself to studying Arabic and acquiring a more thorough understanding of politics in the two countries. I engaged with Egyptian journalists while working on non-profit projects, and explored the eventful aftermaths of the revolutions during my visits to Cairo and Tunis, and through discussions with some of the main protagonists of the uprisings. Becoming entangled in the two transition processes, I maintained my interest in the question of why they eventually yielded very different outcomes in terms of bringing about democratic change. This thesis, which looks at the processes that guided constitutional change, probes one aspect of this question.

I am thankful to all those who have encouraged, inspired, and engaged with me throughout this journey, and in their different ways pushed me towards completing this text. This support was first and foremost given by my two brilliant supervisors, Renske Doorenspleet and Nicola Pratt. Both added a necessary ingredient to this project and one that I clung to at the most difficult moments. That ingredient was their trust and belief that what I was doing was worth undertaking, that my research would, in due course, result in a thesis, and that I was the right person for that task. At Warwick, discussions with Mike Saward have been both stimulating and comforting. I was also lucky to have a brilliant peer group. Among them, Aya Nassar, Te-Anne Robles, Maria E. Giraudo, Jack Copley, Sean McDaniel, Eloïse Bertrand and Dženeta Karabegović, all of whom enriched my doctoral studies with their friendship but also made an indelible mark on the way I think about politics. I would like to recognize the input early on into my thesis by participants of the 2013 APSA MENA Workshop, and Amaney Jamal and my mentor John Carey in particular. I also wish to thank colleagues from the 2015 Constitution Building in Africa Workshop organized by the Central European University and the International IDEA, Radek Buben and Štěpán Drahokoupil who taught me at the Charles University in Prague, and Lise Storm who taught me in Exeter. The process of producing this thesis concluded with a thought-provoking and encouraging discussion with my two examiners, Katharine Adeney and Ece Özlem Atikcan, for which I am most grateful.

Field research experience usually expands the lists of acknowledgements, and that fact is no different in my case. In Tunisia, I am especially grateful to Déborah Perez and Imen Hafsaoui, whose generosity in offering friendship and helping me to make vital contacts made the enterprise of fieldwork almost effortless, and taught me an important lesson about scholarly cooperation. I was also fortunate in meeting and discussing ideas with Nedra Cherif, Anne Wolf, Ghada Louchichi, Cindy Reiff, Achref Aouadi, Lorenzo Feltrin, Jérôme Heurtaux, Jonathan Murphy, Vincent Geisser, Rached Cherif, Duncan Pickard, and Karima Dirèche, Selim Ben Abdessalam and Mouldi Riahi. I am also indebted to Nathan Brown, Ahmed Morsi, Wafaa Dawod, Bahaa Eltoweal, Alexis Blouët, Clément Steuer, Ahmed Maher, and Abdallah Helmy among many others who helped me to navigate the Egyptian political scene.

Throughout the writing of the thesis, I was inspired by my interviewees, who breathed life into the project by sharing their own personal and precious stories. They reminded me so many times of the reasons that I had begun to wonder about the uprisings in Egypt and Tunisia, and, indeed, why I felt compelled to write this thesis.

This research would not have been possible without the generous funding I received through the Chancellor's Scholarship of the University of Warwick. My field research in Tunisia has been supported by the Marguerite Ross Barnett Fund grant, the Carnegie Corporation of New York and the American Political Science Association. Parts of this thesis draws on interviews conducted in Egypt and Tunisia between June and August 2014, that is before I was officially registered for the PhD programme at Warwick. That element of my research was funded by the "Specific university research for 2014" scheme of Charles University in Prague. In Prague, where I spent the last year writing up, the Institute for International Relations not only provided a stimulating research environment but a host of friendly colleagues, and a much-needed desk! I am deeply grateful for all the support with which I was provided.

Finally, I am most grateful for the support, both emotional and material, I received from my family. They have always encouraged me to stretch my academic capabilities to the fullest, and without their confidence in me and the security net that they provided, I would never have taken the risk to read for my M.A. in Exeter, let alone start the PhD journey at Warwick. I can never thank my partner, Vojtěch, enough for his love, friendship, and trust.

### **Declaration of Authenticity**

I declare that this thesis is entirely my own work based on my personal research. This thesis contains no material previously published or written by another person, except where due reference has been made. Moreover, this thesis contains no material which has been accepted for the award of any other degree or diploma in any university, and is less than 80,000 words in length.

Tereza Jermanová, Prague  
September 2018

## **Abstract**

The adoption of a new constitution following the removal of an autocrat is an important step towards the establishment of a democratic regime. While many factors can influence whether the new constitution is broadly accepted by political parties or not, international actors involved in democracy promotion and peace-building have consistently emphasized the importance of crafting inclusive constitution-making processes. However, so far, little systematic evidence has been gathered to prove that constitution-making design matters. The main question of this thesis, therefore, is: Does inclusive constitution-making design help to foster agreement on a constitution during democratization, and if so, how? This contains two sub-questions: (1) Does the difference in constitution-making design help to explain why political parties of the anti-authoritarian coalitions disagreed on the constitution in Egypt, while they reached agreement in Tunisia, after the 2010/11 uprisings?; (2) Why do some countries adopt a design that is inclusive and others do not? This thesis draws on democratization and constitution-making scholarship to inform an investigation into these questions. Its main theoretical contribution lies in bringing together perspectives from scholarly traditions that have rarely crossed paths. The empirical contribution of this thesis is that it presents original primary material, including close to 60 semi-structured interviews conducted in Cairo, Tunis, and Prague between 2014 and 2017. Combining a comparison of two similar cases of constitutional change in the midst of democratization, Egypt and Tunisia, with a within-case analysis, the thesis moderates the claim that constitution-making design matters. It argues that inclusive design can function as a safeguard against a situation where a constitution is fashioned by a temporary majority. Yet, inclusive procedures, of themselves, cannot guarantee that the constitution will be embraced across political divides, while the intrinsic problem of endogeneity further calls into question the weight attached to the design-based explanation. Finally, the thesis develops and applies conceptual tools which help to distinguish between two forms of inclusiveness which previously have been only broadly outlined in theoretical accounts of constitution-making, shedding light on different mechanisms through which they impact on constitutional agreement.



## **List of Abbreviations**

CA – Constituent Assembly  
CC – Commission of Consensus  
CPR – Congress for the Republic  
DC – Drafting Committee  
DRI – Democracy Reporting International  
ECOSOC – United Nations Economic and Social Council  
ESDP – Egyptian Social Democratic Party  
EU – European Union  
FEP – Free Egyptians Party  
FJP – Freedom and Justice Party  
HA – Higher Authority for the Realization of the Objectives of the Revolution,  
Political Reform and Democratic Transition  
HQLR – Hare Quota with Largest Reminders  
IDEA – Institute for Democracy and Electoral Assistance  
ISIE – Higher Authority for Elections  
JDC – Joint Drafting Committee  
LPR – League for the Protection of the Revolution  
LTDH – Tunisian Human Rights League  
MB – Muslim Brotherhood  
MP – Member of Parliament  
MSSD – Most Similar System Design  
NCA – National Constituent Assembly  
NDP – National Democratic Party  
NSF – National Salvation Front  
OPPP – Provisional Organization of Public Authorities  
PA – People’s Assembly  
PCOT – Tunisian Workers’ Party  
PDP – Progressive Democratic Party  
PF – Popular Front  
PR – Proportional Representation  
RCD – Democratic Constitutional Rally  
SCAF – Supreme Council of the Armed Forces  
SCC – Supreme Constitutional Court  
SDG – Sustainable Development Goals  
UGTT – Tunisian General Labour Union  
UN – United Nations  
UNDP – United Nations Development Programme  
USIP – United States Institute of Peace  
UTICA – Tunisian Confederation of Industry, Trade, and Handicrafts  
WATAD – Democratic Patriots Unified Movement

## Introduction

“Constitutions provide an overarching legal framework that set out the basis of a social contract between State and its people. They establish the institutions of government and their powers vis-à-vis each other and the people. UNDP supports participatory, inclusive, transparent constitution-making processes that help build consensus around a shared vision of society.”

*UNDP website, 2018<sup>1</sup>*

“Many of us likely suspect that the conditions and rules under which founders write, deliberate, and ratify will be consequential. We just cannot say with any authority how they matter or to what extent.”

*Ginsburg, Elkins, and Blount (2009, p. 202)*

After the historic vote on the Tunisian constitution in January 2014 in the National Constituent Assembly (NCA), Mustafa Ben Jaafar, the Assembly’s president, was quoted as saying: “This constitution, without being perfect, is one of consensus. We had today a new rendezvous with history to build a democracy founded on rights and equality”.<sup>2</sup> This quote is emblematic of the debates about constitutional change that

---

<sup>1</sup> UNDP, “Democratic governance and peacebuilding”, available at: <http://www.undp.org/content/undp/en/home/democratic-governance-and-peacebuilding/inclusive-political-processes/constitutional-reform.html> [accessed 12 August 2018].

<sup>2</sup> Associated Press, “Tunisia signs new constitution”, *The Guardian*, 27 January 2014, available at: <https://www.theguardian.com/world/2014/jan/27/tunisia-signs-new-constitution-progressive> [accessed 12 August 2018].

took place in Tunisia and Egypt after the popular uprisings that swept away their longstanding dictators in 2011. Writing new constitutions, and ones that would be built on broad agreement between the political forces that emerged from the revolutions, was viewed as a critical task for the countries' journeys to democracy. This thesis is concerned with the processes of producing constitutions in the wake of democratic change. Specifically, it investigates whether constitution-making design, that is rules and practices that frame how protagonists of constitutional change convene, debate and approve constitutions, has a bearing on constitutional agreement.

It does so in the context of the Arab uprisings and the two countries where popular protests triggered the removal of dictators, Egypt and Tunisia. Scrapping old constitutions and writing new ones had its symbolic value, putting a stamp on the move away from authoritarianism. In practical terms, the reforms could have focused on the adjustment of the legal order to reflect the democratic aspirations of the 25 January Revolution in Egypt and the Revolution of Dignity in Tunisia. Formally laying down provisions underpinning groups' and individuals' rights and freedoms, reforming the relationship between the executive, legislative, and judiciary, and placing restraints on governments constituted an important step towards institutionalizing democracy. It is, hence, not surprising that constitutional reforms emerged at the top of the political agenda immediately after the revolutionary tide unseated President Zine El-Abidine Ben Ali in Tunisia, and Hosni Mubarak in Egypt, in January and February 2011, respectively.

In Egypt, this aspiration mirrored the opposition efforts to reform the 1971 Constitution which, prior to Mubarak's fall, was a key part of its strategy in challenging the regime. Mubarak's opponents regularly questioned electoral laws that favoured the ruling National Democratic Party (NDP) in court in order to press for

amendments. Later on, the opposition called for constitutional changes that would allow independent candidates to run for the presidency and give judges the power to supervise electoral processes in which fraud was not uncommon (Brown, 2011b).<sup>3</sup> Constitutional change was also a central issue in Tunisia. This manifested itself when Tunisians who, a few days before, had caused Ben Ali to flee to Saudi Arabia, returned to the capital's Kasbah square on 20 February 2011, demanding the election of a constituent assembly to write a new constitution. Protesters viewed producing a new constitution as "a concrete and audible way to put down the regime" (Hmed, 2016, pp. 86-9).

Changing the constitutions was, nevertheless, expected to be a challenging endeavour. Diverse groups in Egyptian and Tunisian society joined forces to pressurise their authoritarian presidents and governments to resign. Yet these initial anti-authoritarian coalitions, to use Przeworski's (1988, pp. 63-4) term, were far from coherent entities. Political parties in Egypt and Tunisia were divided along an array of cleavages, including left-right, generational and, most importantly, religious (Shehata, 2010; Haugbølle and Cavatorta, 2011). While they might have agreed on overthrowing their dictators, as in other transitioning countries, these parties had different, and often competing, ideas about, and preferences for, the answers to the question of how politics should be organized after the presidents for life were gone (see Przeworski, 1988, pp. 63-4). Tunisians appeared to have bridged these contentious issues when parties across the divides embraced the constitution in January 2014, while the charter

---

<sup>3</sup> BBC, "Mohammed ElBaradei Urges Egypt Election Boycott", 7 September 2010, available at: <https://www.bbc.com/news/world-middle-east-11212449> [accessed 12 August 2018].

produced in Egypt in November 2012 seemed only to foster disagreement and led to deepening political polarization along the Islamist-secularist friction line.<sup>4</sup>

My motivation for writing this thesis developed against the backdrop of two trends that overlapped at the time when constitution-making processes were underway in the Arab Spring countries. The first of these trends was the increasing attention that was being paid by the international community to constitution-making assistance. As part of this agenda, international organizations which focused on constitutional reforms began to promote so-called “best practices” for constitutional change globally. Perhaps influenced by this movement, the second trend manifested itself in terms of the weight that local actors, students of regional politics, and constitutional experts attached to the broad agreement on new constitutions in Egypt and Tunisia. These two trends sparked my interest because they intersected in the strong, and often uncritical, conviction that constitution-making processes are consequential and that inclusive processes are a key to constitutional agreement.

The main question of this thesis, therefore, is: Does inclusive constitution-making design help to foster agreement on a constitution during democratization and, if so, how? This contains two further sub-questions: (1) Does the difference in

---

<sup>4</sup> In line with Shehata (2010) and most of the mainstream literature, I distinguish between the broad categories of Islamists and secularists (which I use interchangeably with non-Islamist or secular-leaning). I use these terms to distinguish between the two groups’ understanding of the role of religion in national politics. The term secularist, hence, does not imply its proponents were, on a personal level, less pious than Islamists. Furthermore, and as described in the coming chapters, these categories contain a wide range of political forces on the left and right in terms of their preferred economic policies, or in advocating for more or less conservative social projects. Given the anti-religious connotation of the word secular in the Egyptian context, politicians within this stream preferred to label themselves as “civil forces”. Nevertheless, I stick to the term secularist, because the term “civil forces” is ambiguous and its particular meaning in Egypt might be misleading to a foreign audience.

constitution-making design help to explain why political parties in the anti-authoritarian coalitions disagreed on the constitution in Egypt while they agreed in Tunisia?; (2) Why do some countries adopt a design that is inclusive while others do not? In answering these questions, this thesis moderates the claim that constitution-making design matters. It argues that inclusive constitution-making design can function as a safeguard against a situation where a constitution is fashioned by a temporary majority. My basic contention is that constitution-making design, on its own, cannot guarantee agreement between political opponents that find themselves very far apart on key issues and that, therefore, other factors have to be present to ensure that the differing views of those building the constitution are accommodated. In addition, by focusing attention on the question of how constitution-making designs emerge, the thesis indicates that only some contexts might be conducive to the facilitation of the coveted inclusive process. The problem of endogeneity then further reduces the validity of the weight attached to the design-based explanation of the different outcomes in the two cases studied in this thesis.

To set the scene, I begin this chapter by introducing the two policy trends described above. I then move on to situate the thesis within two relevant scholarly debates: democratization and constitution-making. I close the chapter by outlining the way I explore the influence of inclusive constitution-making design on different outcomes of the two constitutional change processes under investigation: the broad constitutional agreement in Tunisia and the disagreement in Egypt.

## **1.1 Setting the Scene: Constitutional Agreement and International Assistance for Constitution-makers**

In 2011, Lakhdar Brahimi, an Algerian politician with a career in peace-making and, at the time, the United Nations (UN) and Arab League envoy for Syria, remarked: “Until a few years ago, the focus of international constitutional assistance was on providing guidance about the content of a constitution rather than on the process by which it is made” (Brandt et al., 2011, p. i). That he made his comment in a foreword to a handbook for constitution-makers signified an important shift that had developed over the previous two decades; the international community had become increasingly attentive to processes through which constitutions are produced.

This development may have been triggered by the fact that constitutional change has become ever more common in the past thirty years, as argued by Hart (2003) and Ginsburg and Aziz (2014, p. 117). Unfortunately, there is, to my knowledge, no data set available that would confirm this claim. What can be traced is that during the 1990s and 2000s a number of international organizations in the field of democracy assistance, development, and peace-building launched programs and activities that, apart from the content of constitutions, focused also, and often exclusively, on the processes of making constitutions and their subsequent implementation. Not only that, but assistance to protagonists of constitutional change in designing suitable processes for making new and reforming old constitutions has since developed into a central element in these organizations’ toolbox in building peace and democracy. While the United Nations Development Programme (UNDP) 2008 – 2013 Strategic Plan did not mention the word constitution at all, the more recent version for 2014 – 2017 states that the UNDP will “assist countries to maintain or secure peaceful and democratic governance” when facing such challenges as

“reforming their constitutions”.<sup>5</sup> The UNDP website underscores the importance of this statement when it specifies that “for the first time, the... [plan] explicitly recognizes constitution-making assistance as a key component of UNDP’s support for inclusive governance, peacebuilding and sustainable human development.”<sup>6</sup>

An analogous development can be recognized with other organizations in the field of constitutional assistance. Interpeace, which started as project under the UN in 1994 and was involved primarily in peacebuilding activities, now has a programme called Constitution-making for Peace.<sup>7</sup> Similarly, the Swedish International Institute for Democracy and Electoral Assistance (IDEA), whose domain originally was electoral assistance, has embarked on constitution-related work since 1996 through its regional programs. In the mid-2000s, IDEA launched its Constitution Building Processes Programme, which, as the name implies, deals specifically with processes of writing and implementing constitutions.<sup>8</sup> In addition, Berlin-based Democracy

---

<sup>5</sup> UNDP, “UNDP Strategic Plan: 2014-17”, 23 September 2013, p. 28, available at: [http://www.undp.org/content/undp/en/home/librarypage/corporate/Changing\\_with\\_the\\_World\\_UNDP\\_Strategic\\_Plan\\_2014\\_17.html](http://www.undp.org/content/undp/en/home/librarypage/corporate/Changing_with_the_World_UNDP_Strategic_Plan_2014_17.html) [accessed 12 August 2018]. Compare with the older Strategic Plan, UNDP (2008) “Strategic Plan: 2008-2011, Accelerating global progress on human development”, available at: <http://web.undp.org/execbrd/pdf/dp07-43Rev1.pdf> [accessed 12 August 2018].

<sup>6</sup> UNDP, “UNDP Guidance Note on Constitution-Making Support”, 5 February 2015, available at: [http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/parliamentary\\_development/GuidanceNote\\_ConstitutionMakingSupport.html](http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/parliamentary_development/GuidanceNote_ConstitutionMakingSupport.html) [accessed 12 August 2018].

<sup>7</sup> See the Interpeace website. Interpeace, “History”, available at: <https://www.interpeace.org/who-we-are/history/> [accessed 12 August 2018]; and Interpeace, “Constitution-making”, available at: <https://www.interpeace.org/what-we-do/constitution-making-for-peace/> [accessed 12 August 2018]. Unfortunately, their website does not provide information about when exactly was the project launched.

<sup>8</sup> See the website of International IDEA. IDEA, “History of International IDEA’s work on constitution building”, available at: [http://www.idea.int/cbp/history\\_of\\_cbp.cfm](http://www.idea.int/cbp/history_of_cbp.cfm) [accessed 24 August 2016].



Reporting International (DRI) today includes “constitutions” among its main activities, and apart from the focus on their content and implementation, its website reveals the organization offers support in the processes of constructing them.<sup>9</sup>

These programmes provide opportunities for sharing experience among fellow constitution-makers from diverse countries, as well as providing other types of support. For instance, those curious about learning more about how to proceed with constitution-making can browse through a wide range of resources on these organizations’ websites, including case studies and handbooks with practical tips on how to organize the process. Some of these organizations advertise training courses for constitution-makers and provide opportunities for networking.<sup>10</sup> It is also not uncommon for constitutional experts to advise decision-makers on process-related aspects of constitutional change.<sup>11</sup> In addition, international assistance involves financial support.<sup>12</sup>

---

<sup>9</sup> See the DRI website. DRI, “Constitutions”, available at: [http://democracy-reporting.org/?page\\_id=279](http://democracy-reporting.org/?page_id=279) [accessed 24 August 2016].

<sup>10</sup> This is based on the information provided on the websites of UNDP, DRI, IDEA, and Interpeace.

<sup>11</sup> An example is the work of Christina Murray, one of the leading specialists on constitution-making and Professor of Constitutional and Human Rights Law at the University of Cape Town. In the mid-1990s, she sat as an expert on a constitutional panel in South Africa and has since then either directly participated in constitutional processes or served as an advisor in such diverse places as Fiji, Kenya, Yemen, Somalia, Egypt, Libya, and Nepal. This information is based on informal conversations with some of these experts and published material about them. See e.g. University of Cape Town, “Staff. Christina Murray”, available at: <http://www.publiclaw.uct.ac.za/pbl/staff/cmurray> [accessed 12 August 2018].

<sup>12</sup> Writing about the recent Tunisian experience, a report produced by the Carter Center (2014, p. 76) described how key international donors – national governments and the European Union – channelled funds in support of the Tunisian NCA through the UNDP. The report claimed that the UNDP’s total budget increased to \$18.6 million (Carter Center, 2014, p. 76).

Crucially, this assistance comes with a particular conception of how constitution-making should proceed. Practitioners have stressed that it is how protagonists of constitutional change debate, draft, and approve their constitutions that matters (Miller, 2010; Eisenstadt et al., 2015; 2017; Samuels, 2006b; Schmitter, 2001; Ghai and Galli, 2006; Brandt et al., 2011). In their handbook, Brandt et al. (2011, p. iv) assert that how a constitution is constructed is equally as, or even more, important than its content. Emerging “best practice” in constitution-making that policy-makers encourage revolve around the idea that these processes should be, above all, democratic. Specifically, policy documents have underlined four core principles to which constitution-makers should aspire globally. These involve inclusiveness, representation, public participation, and transparency. An exemplar is the Guidance Note of the UN Secretary-General from 2009, which emphasized that the UN assistance to constitution-making “should be designed to contribute toward inclusive, participatory and transparent processes”.<sup>13</sup>

Some authors and policy documents acknowledge the limitations of these prescriptions. They stress that constitution-making does not depend solely on finding a suitable method, because sorting out differences and negotiating a coherent constitutional text is not always a function of the rules that frame the process. This issue is further complicated by the nature of constitution-making, which entails the distribution of power and resources and is, consequently, deeply political and

---

<sup>13</sup> UN, “Guidance Note of the Secretary-General: United Nations Assistance to Constitution-making Processes”, April 2009, pp. 2-4, available at: [https://www.un.org/ruleoflaw/files/Guidance\\_Note\\_United\\_Nations\\_Assistance\\_to\\_Constitution-making\\_Processes\\_FINAL.pdf](https://www.un.org/ruleoflaw/files/Guidance_Note_United_Nations_Assistance_to_Constitution-making_Processes_FINAL.pdf) [accessed 19 August 2018]. See also handbooks published by the International IDEA (Böckenförde et al., 2011) and by the Interpeace (Brandt et al., 2011: 3).

contentious (Brandt et al., 2011).<sup>14</sup> Practitioners maintain reservations about the universal application of “best practice” across diverse contexts (see e.g. Brandt et al., 2011; Miller, 2010, p. 601). Individual recommendations also contradict one another. For example, if too many players are involved in constitution-making, the process may be protracted, and the final negotiated text incoherent (Brown, 2011a, pp. 10-11). Finally, while stressing that a poorly designed process can have undesirable consequences, most notably in post-conflict countries, they are sceptical about the positive effect even of processes that are well-designed (Miller, 2010, p. 649). Despite considerable limitations, promotion of these ideals continues throughout the world, and the region of the Middle East and North Africa is no exception (see DRI, 2011; Gluck and Brandt, 2015).

Meanwhile, as politicians struggled to draw up constitutions in Egypt and Tunisia, observers understood that producing documents that all political forces could agree on, respect, and view as legitimate was essential if democracy was ever to replace authoritarian rule. Analysts Revkin and Auf (2012, p. 9) argued that if the constitution-making process in Egypt was to generate a constitution “that is respected by all social and political forces,” disagreements regarding the process of writing it had to be resolved. The constitution could only become legitimate, the authors claimed, if it reflected consensus and compromise between the major political groups: Islamists, liberals, socialists, revolutionaries, and secularists. Coincidentally, less than two weeks before the Tunisian NCA passed the final draft, an expert on Tunisian

---

<sup>14</sup> UNDP, “UNDP Strategic Plan: 2014-17”, 23 September 2013, p. 5, available at: [http://www.undp.org/content/undp/en/home/librarypage/corporate/Changing\\_with\\_the\\_World\\_UNDP\\_Strategic\\_Plan\\_2014\\_17.html](http://www.undp.org/content/undp/en/home/librarypage/corporate/Changing_with_the_World_UNDP_Strategic_Plan_2014_17.html) [accessed 12 August 2018].

politics, Pickard (2014), cautioned that “broadening and solidifying elite agreement on Tunisia’s political order is the most daunting challenge in the coming year”.

Lack of agreement, observers speculated, could have hindered democratization (Hamad, 2012, p. 52; El-Shobaki, 2014, p. 95). A noted scholar of constitutionalism, Brown (2012b), warned that a constitution imposed against the “protestations of a vocal minority” in Egypt would result in a political atmosphere of “bitter divisions” and “extreme suspicion.” Amr El-Shobaki (2014, p. 95), an Egyptian politician and political science professor, lamented, with hindsight, that Egypt’s Constituent Assembly (CA) did not produce a “text of consensus” but instead “one of sharp disagreement” which, in turn, contributed to a deepening of the existing political polarization. “When a community fails to find consensus on its constitution,” El-Shobaki concluded, “this represents the beginning of the failure of its democratic experience” (2014, p. 95).

Inclusive constitution-making was viewed as key to securing the coveted constitutional agreement (Moustafa, 2012, p. 6; DRI, 2011, pp. 1-2; Carey and Reynolds, 2011, p. 47; Revkin and Auf, 2012, p. 9). Two publications are especially relevant in articulating this position. In line with the emerging international guidelines for constitution-making, a briefing paper by the DRI from November 2011 complained that little attention had been given to “establishing inclusive procedures that foster political consensus in the making of new, democratic constitutions” in Libya, Tunisia, and Egypt. The paper recommended adopting supermajority requirements for appointing constituent assemblies, their internal work, and a final vote on any constitution. The paper argued that such an approach would create “incentives for compromise and moderation” by preventing a single political group from dominating constitution-making. Such a consensual process, they suggested,

would make broad public acceptance of new constitutions more likely and benefit long-term political stability (DRI, 2011, pp. 1-2).

A similar argument was put forward by Carey and Reynolds (2011). In their article for the *Journal of Democracy*, they evaluated emerging plans for electoral reforms across some of the Arab Spring countries, including Egypt and Tunisia. They recommended that above all other criteria, electoral systems should put a premium on inclusivity, precisely because elections are held to generate constituent assemblies. The authors concluded that: “Without electoral systems leading to fully inclusive constitutional-design processes and parliaments, many of the hopes for democracy in the Arab world may falter at the first hurdle.” (2011, p. 47)<sup>15</sup>

A cursory examination of the empirical data suggests that these views might be correct. Three years after the 2010/11 revolution, the Tunisian NCA, representing a wide range of societal interests, approved the new constitution almost unanimously. Between 2014 and 2015, Tunisia’s rating by Freedom House – an organization that produces a ranking of freedom in the world often employed by political scientists as an indicator of democracy – improved in the major category of political rights from 3 to 1 (i.e. from partially free to free). One of the reasons behind the upgrade was the “adoption of a progressive constitution”.<sup>16</sup> Egypt’s rating on political rights improved in the year following the passage of a new constitution, that is, between 2012 and

---

<sup>15</sup> In a similar vein, previously cited authors, Revkin and Auf (2012, p. 9) suggested that for the new Egyptian constitution to be seen as legitimate, the process involved in its production should encompass “inclusive and participatory dialogue engaging every interest group.”

<sup>16</sup> Freedom House, “Freedom in the world 2015: Tunisia”, available at: <https://freedomhouse.org/report/freedom-world/2015/tunisia> [accessed 22 July 2016].

2013, from 6 to 5 (i.e. from not free to partially free).<sup>17</sup> However, the reason behind the upgrade was not the constitution.

After most non-Islamist representatives left the CA for good in November 2012, following months of tensions, Islamist parties carried on drafting and voted through the final version while their opponents were absent from the Assembly. The response was a campaign launched by numerous non-Islamist parties and civil society groups calling for a “no” vote in the upcoming constitutional referendum and large demonstrations, during which Islamists and their opponents clashed violently.<sup>18</sup> Freedom House remarked that the constitution its critics saw as “written by an unrepresentative and overwhelmingly Islamist constituent assembly” failed “to quell deep mistrust and tensions between liberal and Islamist political factions”.<sup>19</sup> The lifespan of the constitution was short. Only eight months later, on 3 July 2013, the military intervened directly in politics following a new popular upsurge, ousting Islamist president Mohamed Morsi and suspending the recently approved charter.<sup>20</sup>

---

<sup>17</sup> Freedom House, “Freedom in the world 2013: Egypt”, available at:

<https://freedomhouse.org/report/freedom-world/2013/egypt> [accessed 22 July 2016].

<sup>18</sup> Saleh, Y. and S. Fayed, “Egypt’s opposition protests against constitution”, *Reuters*, 18 December

2012, available at: <http://www.reuters.com/article/us-egypt-politics-idUSBRE8BH0LY20121218>

[accessed 26 July 2016]; Samak, D., “Egypt’s National Salvation Front to vote against constitution”, *Ahram Online*, 12 December 2012, available at:

<http://english.ahram.org.eg/NewsContentP/1/60359/Egypt/Egypt's-National-Salvation-Front-to-vote-against-c.aspx> [accessed 25 July 2016].

<sup>19</sup> Freedom House, “Freedom in the world 2013: Egypt”, available at:

<https://freedomhouse.org/report/freedom-world/2013/egypt> [accessed 22 July 2016].

<sup>20</sup> General Abdul Fatah Khalid al-Sisi, Head of the Supreme Council of the Armed Forces, announced the suspension of the constitution in a statement on 3 July 2013, which also deposed the President.

See Al Jazeera, “Transcript: Egypt’s Army Statement”, 3 July 2013, available at:

<http://www.aljazeera.com/news/middleeast/2013/07/201373203740167797.html> [accessed 25 July 2016].

Consequently, Freedom House's rating for Egypt in 2014 went down from partially free to not free.<sup>21</sup>

This section has demonstrated that assistance to constitution-makers today forms a significant part of the international community's activities aimed at building peace and democracy. It also highlighted the fact that one of the standards to which it aspires is that the constitution-making processes should be inclusive of all the political forces, and that standard has found significant support among analysts of constitutional change in Egypt and Tunisia. Inclusive processes were shown to be key to securing constitutional agreements in complex and difficult contexts. Questions remain as to whether the difference in constitution-making designs really does help to explain the differences in outcomes in Egypt and Tunisia, and why the two countries ended up with different designs in the first place. There is a clear need for a more considered analysis to identify causal links between constitution-making design and constitutional agreement. This thesis provides that analysis.

## **1.2 Constitution-making and Democratization**

This thesis builds on two current academic debates: the extensive literature on democratization, and the burgeoning research on constitution-making. These debates are reviewed briefly below. Analysis reveals that each of them is useful in exploring the relationship between inclusive constitution-making design and constitutional agreement, although neither contains comprehensive answers. The review also reveals that despite sharing individual elements of the research agenda, there has been little overlap between the two fields. While scholars of democratization have showed little

---

<sup>21</sup> Freedom House, "Freedom in the world 2014: Egypt", available at: <https://freedomhouse.org/report/freedom-world/2014/egypt> [accessed 25 July 2016].

interest in the constitution-making processes, the context of democratization has been under evaluated by students of constitution-making.

### 1.2.1 Democratization Scholarship

Constitutional and democratic changes seem to go hand in hand. In many countries transitioning from authoritarian rule, pro-democracy players seek to scrap authoritarian constitutions altogether or at least alter them significantly enough to secure democratic change. Examples include Spain, South Africa, Indonesia, and more recently Tunisia and Egypt (Bonime-Blanc, 2013; Horowitz, 2013; Ebrahim and Miller, 2010). Despite this symbiosis, it is rare for students of democracy to ponder constitution-making to any great extent. To understand why this is so, it is helpful to recall briefly the academic development of, and the analytical distinction between, agency and structure-oriented approaches to the study of democratization. In doing so, I highlight two themes that are not explicitly related to constitution-making but provide valuable parallels: the understanding that democratic transition and subsequent consolidation are periods when the rules of the political game are being changed, and the advancement of the idea that if democracy is to endure, rival political factions must agree on its rules.

Researchers immersed in the older, structural approach that came to dominate the discipline from the 1960s onwards generally focused on macro-level, structural factors that preceded moments of democratic change. When Moore wrote his *Social Origins of Dictatorship and Democracy* in 1966, based on experiences from countries such as the United States, France, Russia and Japan, he understood democratization to be a long and incremental process involving a struggle between social classes. This structural stream has since focused on factors such as the level of socio-economic



development (Lipset, 1959; Inglehart, 1997), the structure of social classes (Moore, 1966), distance from democratic epicentres, culture (Almond and Verba, 1963), and type of preceding non-democratic regime (Linz and Stepan, 1996).

In contrast, beginning with the sudden breakdown of authoritarian regimes in Southern Europe and Latin America in the 1980s, scholars in the second tradition chose to utilise a more detailed inquiry into the actual events of transitions from authoritarianism (O'Donnell and Schmitter, 1986; Linz and Stepan, 1996; Higley and Gunther, 1992; Bratton and Van de Walle, 1997; Shain and Linz, 1995). In their seminal work, O'Donnell and Schmitter (1986) proposed that democratic change is quick and revolves around interaction between the elites of the old regime and their opponents. By doing so, they brought scholarly attention to the processes involved in authoritarian breakdown, transitions, and democratic consolidation. This usually meant focusing the level of analysis on the actors, and political leaders in particular, actively involved in these processes, and considering their strategies, motivations, and interactions. By highlighting more immediate explanations of democratization, this approach comes closer to the periods of constitution-making. However, while this scholarship focused on the negotiations between political elites, it generally ignored the structures that framed those interactions.

Later, these actor-centered theories were challenged as academics argued that political leaders do not act in a vacuum but in a world that already exists, and this constrains their behaviour and the range of possible actions (Møller and Skaaning, 2013, pp. 155-6; Mahoney and Snyder, 1999; Karl, 1990; Bratton and Van de Walle, 1997). Despite the fact that more nuanced approaches emerged that combined the focus on agency with attention to structures, few studies considered constitution-making processes. Students of institutional design in nascent democracies usually

cared about the end-product of constitution-making, a constitution which defined the outlook of the political regime. If they looked closer at the processes at all, it was to understand why decision-makers made the particular choices they did about the configuration of macro-political institutions (Lijphart, 1992; Frye, 1997; Negretto, 2009; Jung and Deering, 2015; Shugart, 2005; Benoit and Schiemann, 2001; Colomer, 2004; Birch, 2003; Renwick, 2010; 2011). Although Linz and Stepan (1996, p. 81) complained that the context in which the writing of constitutions develops is a “neglected aspect” in democratization research, not much has changed. More recently, Schmitter (2001, p. 5) invited students of democratization to pay more attention to constitution-making and its design when he hypothesized that the process of writing a new constitution can have a more predictable impact on the democratic trajectory of a country than the institutions defined by the resulting constitution. Still, there has been a continued lack of attention paid to constitution-making processes in general.<sup>22</sup>

The early transition and consolidation literature, nevertheless, does offer valuable insights into the importance and the difficulty of reaching agreement on the institutional framework of a democracy following the ending of an autocracy. The way authors from this tradition understand transitions between regimes is through the prism of institutional change. Transitions consist of a struggle between political forces over old rules of the political game and the invention of new ones (O’Donnell and

---

<sup>22</sup> A remarkable exception is Linz and Stepan’s (1996) distinction between different contexts of constitution-making during democratization. Elster et al. (1998), who analysed the constitutional designs adopted in post-communist Eastern and Central Europe, also took constitution-making processes into consideration. More recently, Horowitz’s (2013) account of democratization in Indonesia following the fall of the Suharto regime showed how democratic change was entangled with the elite-driven and incremental process of constitutional change. I will discuss these books in more detail in the next chapter. Nevertheless, constitution-making has remained on the side-lines in the study of democratization.

Schmitter, 1986, p. 78; Bratton and van de Walle, 1997, p. 10; Przeworski, 1988, p. 63; 1991, p. 14). According to O'Donnell and Schmitter (1986, p. 5), relevant actors seek to restrict the uncertain political space where old political institutions are disputed, by (re)defining the rules and procedures of the new regime that would determine “likely winners and losers in the future”. Through these lenses, transitions become rare windows of opportunity when political institutions are up for grabs. Political elites can make choices about electoral systems and executive-legislative relationships that might then “lock in”, providing them with a limited opportunity to choose a new course (Møller and Skaaning 2013, p. 129). This is also why conflicts between self-interested actors over their preferences for the institutional configuration of the new regime may burst out as soon as the old regime begins to crack. These conflicts, in turn, can endanger democratic consolidation.

The essential condition for democratization emphasized by this literature is, therefore, that rival parties need to come to an agreement on political institutions that are to frame political interactions in the new democratic regime (Higley and Gunther, 1992; O'Donnell and Schmitter, 1986; Przeworski, 1988, 1991; Linz and Stepan, 1996; Munck and Leff, 1997). In its minimalist form, institutional agreements consist of four elements that define a political regime: (1) the questions which participants are allowed in political competition, by what threshold, and whether the representation of minorities is guaranteed; (2) the type of electoral system; (3) the form of government; and, (4) whether the state is to be organized on a unitary or federal basis (O'Donnell and Schmitter, 1986, pp. 69-70; Linz and Stepan, 1996, p. 4). It is easy to see a parallel between institutional agreements cited in this scholarly tradition and agreements on new constitutions, documents that serve primarily to enable and constrain government (Galligan and Versteeg, 2013, p. 6; Elkins et al., 2009, pp. 38-40). In fact, while

institutional agreements may be semi-formal or informal, such as the outcomes of roundtable talks in post-communist Europe, at some point they may be “packaged together into a single handbook – a constitution” (O’Donnell and Schmitter 1986, p. 78; see also Higley and Gunther, 1992, p. 24).

This approach to explaining democratization is, however, less helpful if we want to understand how to move from a situation of divided political elites to an agreement on the institutional framework of a democracy. The success of these negotiations hinges on the choices made by political leaders and their ability to come up with a set of political institutions with which both the stronger and the weaker among them can live (Przeworski, 1988, p. 64; O’Donnell and Schmitter, 1986, pp. 69-73; Higley and Gunther, 1992, pp. 3-4, 32). If democracy is to take root, the set of political institutions agreed upon has to provide a “reasonable” guarantee for both “winners” and “losers” in the founding elections that “their interests would not be affected in a highly adverse manner” under democratic competition (Przeworski, 1988, p. 64). As Møller and Skaaning (2013, p. 136) correctly observed, these theories leave unanswered the question as to what conditions make conflict-prone elites willing to seek compromise on democratic institutions, and why it is so often the case that “no negotiated solution” is possible (Przeworski 1988, p. 76).

In Egypt and Tunisia, as in so many other places around the world today, constitutional talks developed through channels that were created for the very purpose of producing constitutions. Scholars of constitutional change, whose work the next section reviews, bring these channels to the fore, anticipating that their design might have implications for the diverse outcomes observed. However, I will argue, despite numerous scholarly and practitioners’ assertions that constitution-making design matters, there is, so far, little consistent empirical evidence for such a claim.

### 1.2.2 Constitution-making Scholarship

Echoing the developments in the policy arena where constitution-making processes were taken increasingly seriously, students in the interdisciplinary field of constitution-making began to assess whether the way constitutions are produced leads to different outcomes (e.g. Horowitz, 2013; Ginsburg et al., 2009; Carey, 2009; Elster et al., 1998; Elster, 1995; Eisenstadt et al., 2015; 2017; Winder, 2005; 2008; Moehler, 2006; 2008; Lerner, 2011; Elkins and Ginsburg, 2013; Saati, 2015). Much of this research departs from the debates about the impact of macro-political institutions that are prevalent in political science. Scholars asked whether different constitution-making designs had a bearing on a constitution's content, durability, and legitimacy (Ginsburg et al., 2009; Elkins et al., 2009; Carey, 2009). They further tested the designs' impact on resolution of, or a return to, violent conflict (Widner, 2005; 2008), and explored their effect on the levels of post-promulgation democracy, rights' protection provided by the constitution, and constraints the document places on government (Widner, 2008; Carey, 2009; Eisenstadt et al., 2015; 2017). In doing so, authors scrutinized some of the guidelines advocated by the international community, including recommendations for the processes' inclusive, representative and participatory nature (Carey, 2009; Winder, 2005; 2008; Eisenstadt et al., 2015).

However, despite much progress, there is so far little systematic evidence to support the link between different constitution-making designs and these outcomes, and causal mechanisms are still to be detected. Drawing systematic patterns has been complicated, in particular, by the heterogeneous research agenda that scholars in the field have adopted and the related conceptual and methodological challenges. More specifically, constitution-making processes have been perceived as composed of a broad set of institutional elements, actors, and stages which, in addition, can unravel

across specific contexts. Scholars often consider different combinations of these elements and link them to diverse outcomes, which in turn results in conceptual ambiguity. Next, investigation of approximate outcomes, such as democracy and reduction in violence, further complicates efforts at discerning the impact of constitution-making design, as many other factors or country-specific events can come into play (Widner, 2005, pp. 2-3). Much of the research also suffers from endogeneity problems. It remains unclear how constitution-making designs evolve under distinctive circumstances, and whether it is indeed the design or these circumstances that then affect the outcomes being analysed (Brandt et al., 2011, p. 18; 2008; Brown, 2011a, p. 12; 2013; Pepinsky, 2014; Przeworski, 2004; Widner, 2008, p. 1536). For all these reasons, researchers have maintained a degree of caution about their findings (Widner, 2005, pp. 2-3, 15; 2008, pp. 1529-38; Carey, 2009, p. 162; Ginsburg et al., 2009, p. 219). I will return to these issues in more depth in Chapter 2, which will present the theoretical framework for this thesis. To summarize, it appears that despite the scholarly upsurge of interest in constitution-making, the evidence for the impact of “best practices” as outlined by the international community remains weak.

In addition, as I will demonstrate in the next chapter, the context of democratization has been overlooked, with much of the scholarship focusing on post-conflict situations. While a reasonable number of studies have examined the role of citizen participation, the horizontal aspect of inclusion – that of political elites – is surprisingly understudied.<sup>23</sup> This is an important shortcoming. As democratization

---

<sup>23</sup> Perhaps the closest to this focus comes in a book chapter by Carey (2009), where he explored the link between inclusive constitution-making design and democracy. In particular, Carey looked at its effect on the levels of post-promulgation democracy, resulting constraints on government, and constitutional stability. Yet Carey’s measure of inclusiveness was not based exclusively on the involvement of political parties. Instead, he relied on the number and type of collective and individual

literature warns us, political forces emerging from a transition might have conflicting preferences for a new constitution. However, their agreement on the final version is critical for democratic consolidation. Further, both policy documents and analyses of constitutional change in Egypt and Tunisia after 2011, which I have presented above, stressed that constitutional agreement might depend on involvement of a broad range of political parties in a constitution-making process. However, neither scholars of democratization, nor of constitution-making, seem to have given much consideration to the question of whether, and how, the inclusive constitution-making design impacts on a constitutional agreement following an autocrat's removal. This thesis addresses this gap.

### **1.3 Contributions**

This research aims to contribute to both constitution-making and democratization scholarship and, in addition, bridge the artificial distance between the two fields which, despite their shared agenda, have seldom merged. Drawing on insights from each of the traditions, the thesis proposes, and empirically tests, a novel theoretical framework that helps to identify the link between inclusive constitution-making design and constitutional agreement during democratization.

---

veto players who had a formal role in drafting the constitution. More veto players implied a more inclusive process, but it was not the only indicator. He gave a higher value to inclusion of actors who were democratically elected, as well as to situations where the electoral environment was open and participatory. Political parties were thus considered to be one type of democratic veto player, providing their representatives were democratically elected. However, they were only one element in Carey's measurement of inclusivity. Citizens, as a group, became a collective veto player where referenda were organized. Looking at adoption of new constitutions between 1990 and 2005, Carey found preliminary evidence for the correlation between inclusive design and the levels of post-promulgation democracy, constraints of government, and constitutional stability, but remained cautious about the strength of the findings.

The thesis adds to the constitution-making scholarship in several ways. First, it breaks down the long and often abstract causal chains assumed by large-N studies and assesses, on a smaller scale, the impact constitution-making design can have. This is achieved by limiting the scope of the research to the context of democratization, and by exploring constitutional agreement, which is a more proximate outcome than those typically studied in this scholarly tradition. Second, building on existing theoretical literature and accounts by practitioners, this thesis develops conceptual tools to measure inclusiveness. Utilizing these tools in the analysis of the two case studies, it assesses both formal and informal constitution-making channels and the rules and practices that frame them. This approach sheds light on how a neglected aspect of inclusion, that of competing political parties, works not only in theory, but also in a real world situation, and clarifies what an inclusive process means to the participants themselves. Finally, the thesis puts forward the argument that scholars should not use constitution-making design as an explanation but rather seek to explain it. Part of this thesis develops and tests theoretical expectations about factors conducive to inclusive design. In short, instead of fashioning an overly ambitious causal story, this thesis is based on careful empirical inquiry and analysis of original material and is aimed at establishing a solid ground on which future theoretical and comparative research can build to provide a more robust understanding of constitution-making processes during democratization. I argue that this approach is necessary given that our knowledge about the causal relationship between inclusive constitution-making and constitutional agreement has considerable limitations.

The thesis is also relevant to democratization literature. In particular, it highlights that in countries where political forces are divided along religious lines, as in Egypt and Tunisia, divisions over identity-related and symbolic aspects of the



constitution might be as salient, and perhaps even more so, than divisions over the institutional framework of democracy. Resolving these conflicts is critical for democratic consolidation.

The final contribution of this research is empirical. The analysis is based on original primary data. Apart from documents and newspaper articles, the material includes qualitative interviews with leading members of political parties involved in the constitutional change processes, representatives of civil society, and experts. This allows me to bring new insights as to the causes behind the different outcomes of the democratization processes in Egypt and Tunisia.

#### **1.4 Research Design**

To recapitulate, this thesis investigates the following questions: Does inclusive constitution-making design help to foster agreement on a constitution during democratization and, if so, how? Does the difference in constitution-making design help to explain why political parties of the anti-authoritarian coalitions disagreed on the constitution in Egypt while they agreed in Tunisia? Finally, why do some countries implement a design that is inclusive while others do not?

This thesis adopts a qualitative approach to answering these questions, which is well-suited to a situation where our prior knowledge about the causal links under investigation is imperfect. In particular, it relies on a combination of a small-N comparison and within-case analyses, which according to George and Bennett (2005, p. 18) is “the strongest means of drawing inferences from case studies”. Using the Most Similar System Design (MSSD), I compare the experience of two countries, Tunisia and Egypt, who underwent constitutional change following the wave of popular revolutions that in 2010 and 2011 swept through the Middle East and North

Africa. While in both countries the anti-authoritarian coalitions were divided along religious friction lines, the constitution-making process yielded different outcomes. In Tunisia, the constitutional change resulted in broad constitutional agreement, while in Egypt non-Islamist parties rejected the new constitution.

The tentative conclusions about the causal relationship that I draw from the comparisons are strengthened by evidence from within-case analysis. The Tunisian case is especially well-suited for a more detailed inquiry as it can be viewed as a typical case where both the cause and outcome are present (Beach and Pedersen, 2016, p. 281). The constitution-making design was highly inclusive and the parties across the political spectrum embraced the new constitution. This allows me to inquire deeper into the role of inclusion, and to assess the impact of constitution-making design against other potential explanations of constitutional agreement. The disadvantage of this approach is its limited generalizability to other cases. Nevertheless, I believe that it is a necessary trade-off at this stage of exploration.

The analysis builds on several types of data. The main bulk of evidence consists of 56 original qualitative interviews with the protagonists of constitutional change in Egypt and Tunisia, informants and experts that I conducted in several rounds between 2014 and 2017 in Cairo, Tunis, and Prague. These are accompanied by additional informal consultations with experts, journalists, and civil society activists. The majority of the interview material relates to the Tunisian case. This is both because the case plays an important role in the research design of this thesis, as well as the problematic nature of conducting fieldwork of this type in Egypt since the military takeover in 2013. I explain these difficulties and how I dealt with them in more detail in Chapter 3. To research the Egyptian case, I relied primarily on systematic media analysis of over 150 newspaper articles from local online English-

language dailies, *Ahram Online* and *Egypt Independent*, the information from which I supplemented with a more deliberate and detailed search through both local and foreign newspapers. In addition, I drew on primary data (e.g. election results and polls, and documents, including successive constitutional drafts), and secondary data, such as existing academic research and reports produced by local and international organizations. Most of the material that I analysed was in French and English but in several cases I worked also with documents and journal articles translated from Arabic.

### **1.5 Chapter Outline**

In the next chapter, Chapter 2, I evaluate the strengths and weaknesses of the existing constitution-making scholarship more thoroughly. Drawing on insights into the constitution-making design that it provides, as well as on democratization and institutionalist literature and practitioners' accounts, I then outline my own theoretical framework which I developed to assess the impact of constitution-making design and its inclusivity on constitutional agreement among parties of the anti-authoritarian coalition. Asking how inclusion has been perceived by scholars and practitioners, I distinguish between inclusion simply as being at the table (formal inclusion) and, alternatively, as having the capacity to shape the constitution (substantive inclusion). This chapter also provides alternative explanations of constitutional agreement relevant to the Tunisian case. Finally, the chapter identifies expectations about three factors that may influence whether an inclusive constitution-making design is adopted or not: availability, balance of power among parties of the anti-authoritarian coalition, and values. In Chapter 3, I define and operationalize the key concepts of this thesis

and present the research method, type of data that I use, and explain how I collected and analysed this data.

Chapter 4 serves as an introduction to the empirical cases. It outlines the context of the Egyptian and Tunisian uprisings, evaluates whether the democratic transitions were completed, and identifies the major parties of the anti-authoritarian coalitions and the political divisions that set them apart. The chapter will show that both Tunisia and Egypt did complete the democratic transition, but that Egyptians faced more impediments on their way to passing the minimum democratic threshold set by this thesis. The chapter argues that in both the cases, parties of the anti-authoritarian coalition were considerably divided, and what pitted them against each other most intensely were their competing visions for the role of religion in politics and the state. Even though members of the Tunisian opposition had more experience with building cross-ideological coalitions before 2011, this did not seem to significantly mark their relationships after the revolution.

Chapters 5, 6 and 7 form the core of the empirical analysis. Chapter 5 gauges the constitutional (dis)agreements in Tunisia and Egypt. It assesses the overall (dis)agreement, as well as considers negotiations about the most contentious and important aspects of the constitutions. It demonstrates that in both Tunisia and Egypt, articles in the constitutions relating to the role of religion and rights and freedoms were at least as contentious and important to the parties as paragraphs about executive-legislative relations. However, while in Tunisia secularists were able to turn the constitution increasingly in the direction that they preferred, which ultimately secured their endorsement of the text, their counterparts in Egypt were less successful in so doing. Overall, Chapter 5 argues that constitutional negotiations during democratization cannot be seen as isolated islands. A more accurate picture is that the

talks unravel due to a backdrop of conflicts over political power that involve, but are not limited to, the constitutional text. Constitutional agreements are inextricably bound up with the resolution of these broader struggles.

Chapter 6 examines how inclusive the constitution-making designs were in Egypt and Tunisia. I show that the design adopted in Tunisia was significantly inclusive to begin with. Its inclusiveness then increased further in the final months of the process, as weaker secularists were granted almost an equal position in negotiations with the stronger Islamists. This development, however, was only partially an effect of the changes in constitution-making design. Meanwhile, in Egypt, the involvement of non-Islamist parties in constitution-making, as well as their capacity to shape the constitution's content, was decreasing as the process developed. This was, on the one hand, because of the constitution-making design. Most notably, the small majority necessary for the constitution's approval left weaker non-Islamists with little possibility of preventing the adoption of unfavourable elements. On the other hand, their influence over the text was further curtailed as they withdrew from the Constituent Assembly following a disagreement over the constitution-making process on which political opponents held diverging views as well as other political conflicts. The chapter also illustrates the perceptions about constitution-making design and its inclusiveness held by key actors. Building on the available evidence, I argue that although formal inclusion can have tangible benefits for constitutional negotiations, what political adversaries seek, and what matters to secure constitutional agreement, is their ability to shape the constitution, in other words the degree of substantive inclusion.

Chapter 7 explores the origins of constitution-making designs, and asks why it was more inclusive in Tunisia than in Egypt. Contrary to emerging conventional

wisdom that portrays Tunisian political elites as inclined to consensus and inclusion, the chapter provides evidence to suggest that neither of the major Islamist parties in Egypt or in Tunisia sought to limit their influence over the constitution. In Tunisia, however, Islamist Ennahda's (Party of the Renaissance Movement) ability to adjust the design was constrained by the forum where key decisions were made early in the transition and which gave more weight to smaller, non-Islamist parties. In comparison, the high ranking military officers who took political power in Egypt after Mubarak was ousted vested the authority to decide about procedures to guide constitutional change and its inclusiveness to the parties that won majority in the parliamentary elections. This step decisively decreased the chances of an inclusive process emerging. It can be argued that these early decisions, and the factors that framed them, set the processes in Egypt and Tunisia on very different paths. In addition, the chapter exposes the problem of the endogenous nature of the rules and practices that guided constitution-making, showing that constitution-making designs tend to reflect the existing power configurations, rather than create it. The chapter concludes that this situation undermines the concept that designs, of themselves, can serve as an independent factor that could explain constitutional agreement or the lack of one.

Finally, the conclusion in Chapter 8 evaluates my theoretical model against the empirical findings from Egypt and Tunisia and proposes an alternative explanation for the constitutional agreement reached in Tunisia. The research shows that while there is some empirical support for the causal relationship between inclusive constitution-making design and constitutional agreement during democratization, it is less straightforward than the policy and scholarly literature on constitution-making would suggest. I, therefore, propose an alternative explanation for the strong endorsement of the 2014 Tunisian Constitution. I argue that support developed from a situation in

which neither Islamists nor secularists could best their rivals, due to the shifts in the distribution of power between the major political parties throughout the constitution change process.

## **Literature Review and Theoretical Framework: Constitution-making Processes, their Design, and Democratization**

In Chapter 1, I presented the central focus of this thesis, namely the processes whereby constitutions are produced following the overthrow of an autocrat. I underlined the international community's preoccupation with constitution-making during post-conflict transformation and in international democracy assistance, and outlined the "best practices" that have been broadly recommended. I also explained that this thesis sets out to investigate the role of one of these guiding principles: that constitution-making processes should be inclusive of parties across the political spectrum. This chapter will now situate this research agenda within the literature on constitution-making and lay out its diverse landscape that has brought together scholars across disciplines. In doing so, I will highlight the elements that I build on in my exploration of the impact of inclusive constitution-making design on a broad constitutional agreement, as well as expose shortcomings in this body of literature. Much of this research departs from, and has been informed by, the institutionalist approach to political science. I, therefore, open this chapter by situating the nascent constitution-making literature in, and distinguishing it from, established debates about institutional design and choice that are closest to its object of analysis. The former is further indicative of some of the challenges that efforts at establishing causality between constitution-making processes and diverse outcomes face.

In 1995, a pioneer of the research in constitution-making processes, Elster (1995, p. 364) complained that while "much has been written on the consequences of



constitutional design”, such as the presidential versus parliamentary systems and unicameralism and bicameralism, there was no book or even an article that considered the constitution-making process “in its full generality, as a distinctive object of positive analysis”. The past two decades have seen scholars departing from the prevalent debates about the content of constitutions and constitutional design and become increasingly attentive to the role of constitution-making processes. This chapter will show that the field has recently witnessed significant progress, as normative and theoretical claims have become complemented by systematic empirical inquiry.

Nevertheless, despite this expansion, I argue that our knowledge of whether, and how, constitution-making marks various outcomes remains slim, partially due to conceptual and methodological challenges related, but not limited, to the heterogeneous research agenda that scholars have undertaken. Situations in which constitution-making is intertwined with democratic change and the involvement of political parties all remain surprisingly understudied. I therefore close the chapter by presenting an original theoretical framework to inquire into the impact of inclusive constitution-making design on constitutional agreement, building on insights from constitution-making, institutional design, and democratization scholarship, as well as from practitioners’ accounts and the literature on the Arab Spring.

## **2.1 Constitutions as Explanatory Variables and Outcomes**

Before political scientists began to explore the processes whereby constitutions are made, constitutions attracted their attention as explanatory variables. Scholars of institutional, often referred to as constitutional, design considered the effects that various configurations of macro-political institutions have on outcomes, such as

conflict resolution, as well as the quality and endurance of democracy (e.g. Lijphart, 2012; Linz, 1990; Shugart and Carey, 1992; Reynolds, 1999; 2011; Reilly, 2001; Cheibub, 2007; Sartori, 1994). This agenda involved, above all, the study of electoral systems, forms of government, and executive-legislative relationships. More recently, scholars have begun to approach these different institutional configurations as outcomes, asking why they were aspired to in the first place (Lijphart, 1992; Frye, 1997; Negretto, 2009; Jung and Deering, 2015; Shugart, 2005; Benoit and Schiemann, 2001; Sisk, 1995; Colomer, 2004; Birch, 2003; Renwick, 2010; 2011; Adeney, 2007).

An exemplary debate in the older field, that of institutional design, began with the publication of Linz's article linking presidentialism to authoritarian regression in nascent democracies (Linz, 1990). Linz criticised presidential regimes for producing zero-sum outcomes and encouraging a style of politics in which presidents are intolerant of the opposition. Since then numerous books and articles have contributed to the debate about the benefits of presidentialism, parliamentary systems of government, and various models of democracy in between (e.g. Cheibub, 2007; Mainwarring and Shugart, 1997; Elgie, 1999). In a similar vein, in places where societies were emerging from violent conflicts or were seriously divided across ethnic and religious friction lines, such as in South Africa, Afghanistan, Iraq, and Pakistan, scholars have investigated the impact of majoritarian and consensus models of democracy, power-sharing mechanisms, and federal design, looking for institutional cures that would help to sustain peace in these contexts (Adeney, 2007; Reynolds, 1999; 2011; Horowitz, 1991; Reilly, 2001; Lijphart, 1985).

The aim of much of this literature has been to enable an understanding of how institutions can be designed to provide the most fitting solutions for problems faced by countries. A good example of this tradition is Reynolds' book, *Designing*

*Democracy in a Dangerous World* (2011), where he employs a metaphor of “patient” and “cure”. The word patient refers to a society that copes with a particular problem such as salient divisions across political and social cleavages. It is possible to cure the patient by creating institutions that are appropriately designed to tackle these problems. Reynolds, with colleagues (Reynolds et al., 2002), elaborated the entry point of this reasoning elsewhere. Unlike structural endowments such as historical legacies, cultural norms, or a structure of societal cleavages that are difficult to change in a short run, political institutions can be altered (Reynolds et al., 2002, p. 3). Reynolds and others coming from this tradition understood institutional design as one of the “key tools” that democrats may use to “improve the prospects for democracy” (Reynolds et al., 2002, p. 3).

The literature on institutional design has been criticized for discounting the processes through which political institutions emerge, and this criticism has developed from two different theoretical positions. The first criticism relates to the idea that major political institutions can be consciously designed to produce predetermined outcomes. Horowitz (2002; 2008) pointed out that even if there ever was a consensus among political scientists as to what the best designs for particular problems were, they were unlikely to be implemented. One of the main reasons is that constitutions are usually born out of complicated processes that involve bargaining between parties with different interests in, and preferences for, political institutions. If, at least, some of these parties were to achieve what they desired, the resulting constitution would hardly be a coherent document consisting of a single design where each part fits into a larger whole (Horowitz, 2002; 2008). Not surprisingly, in his research, Horowitz (2008; 2013) has focused not only on the question of how constitutional designs

influence different outcomes, but also on constitution-making processes through which these designs come about.

The second position raises the issue of the endogenous origins of institutions. It is tied to the fact that political institutions do not appear in a vacuum but “are the products of political action and the outcomes of political struggles” (Lowndes and Roberts 2013, p. 3). Critics have pointed out that this circumstance might limit the independent effect of formal political institutions on the outcomes under study because, as Elgie (2012, p. 772) described it, those who change institutions are usually the same individuals and forces who then operate under them. More specifically, “if individuals choose institutions that reflect their pre-existing preferences, when they operate under the same institutions their behaviour is not being shaped by them. Instead, institutions are inducing behavior that is consistent with their pre-existing preferences” (2012, p. 772).

This challenge is especially acute when new political institutions, such as those chosen during democratization, are studied. These institutions would become exogenous to power relations and, thus, capable of independently shaping the political process under two conditions (Kitschelt et al., 1999, p. 11). First, political actors can unintentionally set up institutions that undermine their interests when they are misinformed about the institutions’ potential effects or there is a degree of uncertainty about their characteristics and their own standing compared to that of their opponents (Kitschelt et al., 1999, p. 11; Shvetsova, 2003). The second condition relates to the duration of the institution. Political institutions often endure, even as the initial power map changes, because they are difficult to alter and, so, become exogenous to political configurations as time passes (Kitschelt et al., 1999, p. 11). However, if these conditions are not met, Kitschelt and his colleagues (Kitschelt et al., 1999, p. 12)

warned that “new democratic institutions cannot be the primary or exclusive forces that shape the political practice”. In the same vein, Przeworski (2004, p. 527) cautioned that at its extreme when endogeneity is strong, “institutions cannot have a causal effect on their own”. While responses differ in how to deal with this problem, one conclusion that most authors agree on is that institutional designs cannot be studied without taking into consideration their origins (Pepinsky, 2014; Lowndes and Roberts, 2013; Elgie, 2012). I will come back to this issue when I review the constitution-making body of literature.

In contrast to institutional design scholarship that focuses primarily on the effects of different configurations of political institutions, another research agenda developed especially following the 1990s democratic wave in post-communist Europe. Authors treated political institutions as dependent variables, and explored why decision-makers choose the electoral systems and legislative-executive relationships they do. Their work has been influenced by rational choice theory, with scholars often concentrating on modelling the behaviour of strategically calculating and self-interested actors (e.g. Colomer, 2004; Benoit and Schiemann, 2001). Others have stressed that actors’ preferences for the design of political institutions are equally shaped by other factors, including historical legacies, normative beliefs, foreign influence or inspiration (Birch and Millard, 2002; Birch, 2003; Renwick, 2010; 2011).

Since the choices of, and bargaining around, institutional design often happen in situations of constitutional change, the body of literature on institutional choice moves closer, temporally, to the periods that concern constitution-making scholars. While these two approaches appear similar at first glance, they vary in both the factors that they consider as important and the outcomes they seek to explain. Authors interested in constitution-making, too, study the periods before constitutions are made.

Yet this is primarily to understand how the process of making it, in terms of procedural choices and its modalities, affects various outcomes, rather than to inquire exclusively into the motivation behind constitutional choices. The next section explains the rationale behind scholarly and practitioner interest in constitution-making processes in more detail and reviews how, and with what results, the literature has approached the central themes of this thesis: inclusiveness, democracy and democratization.

## **2.2 Constitution-making Processes at the Centre of Scholarly Inquiry**

Traditionally, constitutional politics were perceived as nobler than “normal” politics. In other words, protagonists of constitutional negotiations were expected to care first and foremost about producing a quality text. A prime example was the making of the 1787 American Constitution. Yet constitutionalists later understood that this image of constitutional change was not the rule, but rather the exception. In reality, constitution-making is not that different from other kinds of politics. Even though the idea of the public good may, indeed, guide constitution-makers’ steps, more often than not they represent their own interests, and those of their parties and constituencies, make short-sighted decisions, and act on their passions (Brown, 2008; Ginsburg et al., 2009: 210; Schmitter, 2001, p. 7; Elster, 1995).

What makes constitutional politics special is its end-product. Constitutions are so critical and discussions about them so different from other negotiations because they establish a system of government, define the powers and functions of institutions, add limits to their operation, and regulate “relations between institutions and the people” (Galligan and Versteeg, 2013, p. 6). On a more symbolic note, they define “the nation and its goals” (Elkins et al., 2009, pp. 38-40). They are also expected to last relatively long, as changing them in democratic systems is often made difficult by

the text itself. Once political actors adopt a constitution, they are, in effect, making a decision to bind themselves by rules that will structure and limit their routes to power, and this decision usually becomes hard to alter later. In theory, involved actors, of course, receive something in return; more stable and less uncertain terrain, where the political institutions set up by the constitution not only limit but also protect their interests. This is, at least, the idea behind a metaphor that projects constitutions as elite or wider social contracts, and which has been the backdrop for much of the academic study and policy writing about constitutional change.<sup>24</sup> These specific characteristics of constitutions and constitutional politics are key to understanding the high stakes involved in constitution-making, as well as why actors in the policy arena, along with scholars, are concerned with the design of constitution-making processes.

Given how fundamentally constitutions impact on politics, and because they are so often written by stakeholders who, in the most idealistic cases, may care about the public good as much as about their own interests, producing a constitution that can be widely accepted and followed by both politicians and citizens is inevitably a complex task. What complicates the matter further is that that constitutional change tends to occur at times of crisis, following violent conflicts or the breakdown of authoritarian rule. These contexts may generate more passion than reason, making the prospects for good constitution-making still slimmer (Elster, 1995). It is against this backdrop that scholars and practitioners began to consider about how constitution-making proceeds. They came to believe that well-designed processes helped to

---

<sup>24</sup> This metaphor has, however, been criticized for inaccurately depicting the role of the constitution. For example, Galligan and Versteeg (2013, p. 42) pointed out that unlike corporate contracts, constitutions also enshrine values and proclaim national identity. They maintained that there might be “something sacred or irrational” about a constitution that cannot be found in private contracting and what makes any efficient breach unlikely.

minimize some of the problems observed, while badly designed ones only exacerbated them (Miller, 2010; Elster, 2012).

This approach to constitution-making shares the starting point that characterized the institutional design scholarship introduced in the previous section. Specifically, that it is worth trying to design constitution-making processes in order to minimize undesirable outcomes. The following lines from Elster (2012, p. 149) are indicative of this point:

I take a purely procedural approach to the issue of the optimal design of the constituent assembly, in the sense that I remain agnostic as to the nature of the optimal constitution. (...) The relevant question, however, is whether it is possible to eliminate or minimize the features that, from the ex ante point of view, are likely to lead to bias of one kind or another.

He also urged caution in assessing how far a good design might take us, conceding that in case constitutional change involved “strong but misguided delegates, against whom no procedural safeguards can be erected”, even “the best procedures may lead to a suboptimal outcome” (Elster, 2012, p. 149; see also Miller, 2010, p. 649). While we should strive to design constitution-making processes carefully, procedures alone are unlikely to solve all the issues.

Despite this precaution, the notion that constitution-making processes and their designs matter has been widespread among both academics and experts (Samuels, 2006a; 2016b; Ginsburg et al., 2009; Schmitter, 2001; Wallis, 2014; Miller, 2010, pp.



628-29; Böckenförde et al., 2013).<sup>25</sup> For example, Schmitter (2001, p. 5) asserted that during democratization, a constitution's "substance is less important than the overriding fact that agreement on them has been reached at a particular moment, by a particular sequence and by a particular process". More specifically, he argued that "what counts is when and how these collective decisions" about macro-political institutions are "made, debated, ratified and implemented – more than what is in them" (2001, p. 5).

Authors have since then proposed a variety of causal relationships. It has been argued that processes that are participatory and representative can "provide a forum for the negotiation of solutions to the divisive or contested issues that led to violence, or for a negotiated transition from an authoritarian regime" (Samuels, 2006b, p. 4). Representative and inclusive processes can also affect the legitimacy of the processes themselves, as well as the emergence of a "consensus around a constitutional framework" that is "agreeable to all",<sup>26</sup> "a true social contract among all relevant groups" (Miller, 2010, pp. 628-29), and the "buy-in from across society".<sup>27</sup> Further, constitution-making processes may foster trust-building among involved political elites (Miller, 2010, p. 629), and public participation in them can play "a positive role in state building by fostering a sense of political community" (Wallis, 2014, p. 5). In

---

<sup>25</sup> See also UNDP, "UNDP Strategic Plan: 2014-17", available at: [http://www.undp.org/content/undp/en/home/librarypage/corporate/Changing\\_with\\_the\\_World\\_UNDP\\_Strategic\\_Plan\\_2014\\_17.html](http://www.undp.org/content/undp/en/home/librarypage/corporate/Changing_with_the_World_UNDP_Strategic_Plan_2014_17.html) [accessed 12 August 2018]; and UN, "Guidance Note of the Secretary-General: United Nations Assistance to Constitution-making Processes", April 2009, available at:

[https://www.un.org/ruleoflaw/files/Guidance\\_Note\\_United\\_Nations\\_Assistance\\_to\\_Constitution-making\\_Processes\\_FINAL.pdf](https://www.un.org/ruleoflaw/files/Guidance_Note_United_Nations_Assistance_to_Constitution-making_Processes_FINAL.pdf) [accessed 19 August 2018].

<sup>26</sup> UN, "Guidance Note of the Secretary-General: United Nations Assistance to Constitution-making Processes", April 2009, p. 4.

<sup>27</sup> UNDP, "UNDP Strategic Plan: 2014-17".

contrast, processes that “exclude key players” may not reduce violence and lead to “short-lived” constitutions (Widner, 2008, p. 1520). They can also “create a need for measures” to be taken by part of the political elite if it feels the need to avoid the “disproportionate influence of one political force” (Miller, 2010, p. 638).

Comparative research has sought to establish wider patterns using empirical data about constitutional change. Authors coming from different fields, including constitutional law, post-conflict and peace studies, and comparative politics have investigated whether different types of processes impact on various outcomes, ranging from the levels of violence and democracy, durability of constitutions, their support from citizens, rights’ protection and constraints on the government provided by the resulting constitution, and institutional self-dealing by involved actors such as legislatures (Widner, 2005; 2008; Carey, 2009; Elkins et al., 2009; Elkins and Ginsburg, 2013; Ginsburg et al., 2009; Eisenstadt et al., 2015; 2017; Moehler, 2006; 2008; Samuels, 2006a; Wallis, 2014; Saati, 2015). Despite the numerous claims as to the importance of well-designed constitution-making processes that I indicated above, systematic patterns regarding the relationship between processes and various outcomes, as well as any causal mechanisms involved, are still to be drawn.

I delve into the reasons why this is so in the next sections, where I pinpoint some of the challenges this literature has faced. Before that, I discuss how scholars in this tradition approached democracy and democratization, showing that it has rarely been studied separately, as both a context in which constitution-making unravels and as an outcome. In doing so, I also review how this body of research has dealt with the question of inclusive constitution-making. I argue that while most studies have focused on the role of public participation in constitutional change processes, the link

between constitution-making design that ensures the inclusion of a wide range of political parties and democracy has been less explored.

### 2.2.1 Constitution-making Design, Inclusiveness, and Democracy

This thesis explores the link between the design of constitution-making processes and constitutional agreement. Building on the early transition and consolidation literature, in Chapter 1 I identified constitutional agreements as a necessary, although not of itself sufficient, condition if democracy is to take roots following the downfall of an authoritarian regime. These agreements often create an implicit part of the theorization of the role of constitution-making processes. For example, Elkins et al. (2009, p. 66) who focused on constitutional endurance, understood constitutions as “bargains that embody agreement among the relevant parties”, and others mentioned consensus-based constitutions as ideal outcomes if democracy was to emerge and political reconciliation achieved (e.g. Miller, 2010, p. 652; Samuels, 2006b, p. 4; Carey, 2009, p. 156). Yet broad constitutional agreements have not, to my knowledge, been explicitly studied as a dependent variable by scholars of constitution-making. Nor has the outcome that comes closest to this research, democracy, been the most commonly studied one. This is perhaps because scholars coming from post-conflict and peace-building studies, who dominate the field, preferred to look at peace and reduction of violence.<sup>28</sup>

---

<sup>28</sup> This attention to post-conflict situations is, perhaps, tied to the agenda of international organizations in the field of constitution-making. Two major organizations involved in constitution-making, the United States Institute of Peace (USIP) and Interpeace, work in the field of conflict resolution. In the volume edited by Miller (2010) for the USIP, more than half of the case studies were countries emerging from conflict. Similarly, authors of the handbook for constitution-makers

At the same time, authors who do focus on democracy have, above all, been interested in the role of public participation in constitution-making, not in inclusiveness in terms of involvement of political parties or their leaders (e.g. Saati, 2015; Eisenstadt et al., 2015; 2017; Moehler, 2006). Despite the fact that pacting and bargaining between political elites about the institutional framework of democracy has been highlighted by transition and consolidation theories, some of these authors have viewed it as normatively inferior to citizen participation (Eisenstadt et al., 2017, p. xv, p. 16). Public participation indeed seems beneficial to democracy. One of the most systematic investigations to date which relied on data on 138 new constitutions in 118 countries across the world between 1974 and 2011 found that it had positive influence on the levels of democracy post-promulgation (Eisenstadt et al., 2015). This was most notable where citizens were involved during the stage of the drafting of the constitution, compared to the later debate and ratification phases. The authors found further support for the participation hypothesis in their more recent book, which extended their dataset to include cases until 2014, and confirmed that popular participation, understood as “transparent and meaningful input” by citizens throughout the constitution-making process, had a positive impact on subsequent levels of democracy (Eisenstadt et al. 2017, p. 144).

Case study research and small-N comparisons where more emphasis is given to within-case analysis and causal mechanisms tend to moderate enthusiasm about public participation. Moreover, they suggest that, after all, the involvement of political elites might still be worth looking at. Moehler’s (2006) careful inquiry into constitution-making in Uganda, where the public was involved to a significant extent,

---

published by Interpeace stated that they were primarily concerned with ending violent conflict and building peace in deeply divided societies (Brandt et al., 2011).

found little support for the hypothesis that the involvement of citizens boosted their support for the constitution. Shifting her attention towards the communication by elites with citizens during constitution-making, she instead argued that what mattered was the type of messages that politicians were forwarding to citizens during constitution-making, as it was this that strengthened or weakened the support citizens had for the resulting document. Neither did Saati (2015) find support for the participation hypothesis. Her book combined small-N comparative analysis of over 20 instances of constitutional change with within-case analysis into the cases of Kenya and Zimbabwe where similar participatory processes resulted in different outcomes in terms of the levels of democracy achieved. She argued that it was not the participatory nature of constitution-making but the level of elite cooperation that explained democratic improvement in Kenya and its decline in Zimbabwe. Instead of highlighting citizens, both the studies featured the role of political elites.

As Eisenstadt et al. (2017) coupled their statistical findings on citizen participation with within-case analyses of cases that both contradicted and confirmed their statistical results, they arrived at similar conclusions. According to them, processes most favourable to democracy were those in which elites were unable to dominate and where public participation in the earliest stages of constitution-making provided “the best check against elite control” (2017, p. 146). At this point, however, the authors adopted a broader definition of public participation which involved “interest groups”, such as social movements, civil society actors, and even parties and other domestic opponents acting as intermediaries between incumbent elites and individual citizens (2017, p. 115, p. 122, p. 146). Along with their already quite restricted definition of political elites, by which they meant executives only, this became more of an argument for the inclusion of a wide range of social and political

groups in constitution-making processes than simply for individual citizen participation. As the authors put it, constitution-making “process matters and it is largely a function of the degree and breadth of involvement by a wide range of societal interests” (2017, p. 23).

Another piece of research indicates that the distinguishing feature of actors involved in constitutional change might not necessarily be whether they come from the executive or not, but whether they are democratically elected. Focusing on inclusive constitution-making processes, Carey (2009) differentiated between them based on the type and number of both collective and individual veto players with a formal role in drafting and approving the constitution. While a larger number of veto players generally suggested a more inclusive process, it was also important what kind of actors they were. Carey took citizens into account in cases where referenda were organized, and gave higher value to those actors who were democratically elected, as well as to constitutional moments where the electoral environment was open and participatory (2009, pp. 162-4). Considering cases where new constitutions were adopted between 1990 and 2005, the study found that inclusive constitutional moments correlated with the levels of post-promulgation democracy, constraints on government, and constitutional stability, although Carey stressed that these findings were preliminary (2009, p. 162). The number of democratically elected veto players appeared to be the most influential factor.

This distinction between elite bargaining and citizen involvement might perhaps be best perceived as two types of inclusion, horizontal and vertical, as it has been by authors who research peace settlements. Horizontal inclusion is that between the main political actors, vertical inclusion is between “those who hold power and those broader societal groups and forces who seek capacity to influence decisions that

affect them”.<sup>29</sup> While the claim that elite bargaining is normatively inferior to public participation is one that is difficult to disagree with, nonetheless, actors, such as political parties, are still critical to the adoption of constitutions that are both widely approved and later successfully implemented. The recent experience of Iceland, where citizens, and not parties, deliberated about constitutional change but where the resulting constitution was not later implemented, indicates the importance of having political parties on board (see e.g. Eisenstadt et al., 2017, pp. 147-9). Egypt provides an example of the opposite. The first constitution following the 2011 revolution was approved by the majority of voters in a public referendum in December 2012. However, non-Islamist political parties opposed it and oversaw its suspension after the military intervention in July 2013. In short, the reality is such that the “buy-in” of these political forces and their leaders remains essential and policy-oriented documents and studies of constitution-making often make this point (Miller, 2010, pp. 628-29).

Despite their importance, how political parties, often representing opposing interests, are involved in constitution-making, and how this involvement affects their agreement on the constitution has not been thoroughly tackled in the existing research on constitution-making. There is, nonetheless, an important lesson to be learned from this body of literature. Public participation and negotiations between political leaders may not inhibit but complement one another in producing a democracy. What seems to matter most is the engagement of a range of political forces, and that the involved parties emerge from free, fair and democratic elections. I now turn to review the

---

<sup>29</sup> This distinction has been developed by Christine Bell and colleagues as part of their research project on peace settlements and presented as part of a peer-reviewed report written for the British Academy (2017, p. 7).

literature on one particular context during which constitutional change can occur, that of democratization, which is central to this research.

### 2.2.2 Constitution-making and Democratization

Constitutional change can occur across diverse contexts. Historically, new constitutions were written and old ones extensively redrafted following revolutions, social and economic crises, wars, the creation of new states or regime collapses, and the end of colonial rule (Elster, 1995, pp. 350-1). Although these diverse contexts posed different challenges to constitution-making with, perhaps, the exception of post-conflict situations,<sup>30</sup> these contexts have rarely been studied separately. As the focus here is on democratization, it is especially relevant to note that only a few authors have combined an emphasis on constitution-making processes with attention to situations when countries face the transition from non-democratic to democratic regimes.

This is surprising as in many countries transitioning from authoritarian rule, scrapping authoritarian constitutions altogether, or at least changing them significantly, can be an absolute necessity in order to allow for both more democratic political competition and governance. Although the findings of Elkins et al. (2009, p. 59), which are based on an extensive dataset, suggest exercising caution against reaching sweeping generalizations since their evidence showed that constitutional replacement happened within a year from a democratic transition in approximately 19 % of cases, this still represents a considerable trend.<sup>31</sup> Constitutional and democratic

---

<sup>30</sup> See e.g. Widner (2005; 2008), Lerner (2011), Hart (2001), Ludsin (2011), and Samuels (2006b).

<sup>31</sup> Their data includes cases of constitutional replacement (i.e. not just amendment) between 1789 and 2005, making for “935 different constitutional systems for more than 200 nation states, both past and present” (Elkins et al., 2009, p. 6).



change were intertwined in Spain, South Africa, Indonesia (Bonime-Blanc, 2013; Horowitz, 2013; Ebrahim and Miller, 2010), and in post-communist countries in Central and Eastern Europe (Elster et al., 1998), to name just some of the most prominent cases. More recently, democratic and constitutional aspirations could be seen in Egypt, Yemen, Libya and Tunisia.

Nevertheless, exceptions in the form of edited volumes and single country case studies dedicated to constitution-making during democratization can be found (Hyden and Venter, 2001; Özbudun and Gençkaya, 2009; Elster et al., 1998; Horowitz, 2013). The book *Institutional Design in Post-Communist Societies* by Elster et al. (1998) stands out for its comparative approach. The authors touched on a wide range of issues pertaining to economic and constitutional transitions in Hungary, Bulgaria, the Czech Republic and Slovakia, apart from briefly describing the procedures the countries used for constitutional change. Although they did not identify systematic patterns, their account is useful as it focuses attention on the role of the institutional framework in place in shaping the procedures available for changing the constitution (1998, pp. 79-80). A similar argument was put forward by Horowitz (2013) in his in-depth inquiry into the constitutional and democratic changes in Indonesia. He claimed that the particular process which helped to produce democracy, and which mitigated conflict between protagonists of the constitutional change, depended on the country's historical and structural legacy (2013, p. 292).

Indonesian constitution-making deserves further attention for its relation to the public- versus elite-driven processes dealt with in the preceding section. Horowitz's (2013, p. 18, p. 30) account emphasized the role of Suharto's opponents, in the Indonesian constitution-making process, who as political leaders found themselves divided and lacking in trust in each other. In contrast to the generally accepted wisdom,

he saw the benefit of constitution-making in its representative and inclusive aspects and not necessarily public participation per se, as the Indonesian constitutional change involved little consultations with civil society or the public. Specifically, Horowitz (2013, p. 293) argued that “the slow, consensual, and insider-driven process allowed the careful creation of new institutions and creation of understanding among legislators themselves”, which “undoubtedly helped to mitigate conflicts not only in the legislature but in the polity that was represented there”. Through this process, political actors were able to find a consensus on institutions they “believed they could live with” (2013, p. 293). While he maintained that not all processes have to be this consensual, in societies where “divisions about group identity are linked to conflicting visions of the constitution”, as in Indonesia, the criteria of “participation of contestants on all sides” and “maximum consensus” he concluded are essential if the process is to avoid a conflict over the resulting constitution (2013, p. 294). Similar recommendations can be found in the older transition and consolidation literature. Linz and Stepan (1996, p. 81), rare examples of scholars in this tradition who pondered constitution-making, cautioned against a “partisan constitution approved by ‘temporary majority’”. Instead, divisive issues were to be dealt with in consensual, rather than in a majoritarian manner (1996, p. 83).

The literature that combines the focus on constitution-making processes with democratization is scarce but instructive. In the final part of this chapter, I incorporate the question of the origins of constitution-making processes in the theoretical framework of this thesis and expand on the issue of the involvement of political parties divided over the new constitutions in constitution-making bodies. One last step has to be taken before I develop the theoretical framework. The next section assesses the

limits of scholarly exploration of constitution-making processes, and indicates how this thesis tackles them.

### 2.2.3 Limits of the Scholarly Literature on Constitution-making

Returning to Elster's evaluation of the scholarly exploration of processes of constitution-making, dealt with at the beginning of this chapter, in the mid-1990s, he complained that there were no studies dedicated to constitution-making as the main object of analysis. This chapter has shown that more and more exciting research has been produced about constitution-making processes and their design since that time. Academics have scrutinized some of the initial theoretical assumptions and "best practices" fashioned by the international community, including the role of public participation, inclusivity, and the representativeness of constitution-making. In doing so, they linked the role of procedures that frame who, how, and when, constitutions are produced, to a variety of distinct outcomes.<sup>32</sup> Despite this progress, we still know relatively little about whether, and how, constitution-making marks democracy. Perhaps with the exception of a popular participation agenda where academic research has yielded more robust findings, systematic knowledge about the effects of different constitution-making designs on democracy is yet to be accumulated and causal relationships singled-out. This "modest harvest", to exploit the metaphor used by Brownlee et al. (2015), has its roots in the heterogeneous research agenda and some of the conceptual and methodological challenges that I summarize below.

The conceptual challenge is related to a broad research agenda. The object of analysis in this literature, vaguely delineated as a constitution-making process, is far

---

<sup>32</sup> I owe this conceptualization of a constitution-making process to Ginsburg and colleagues (Ginsburg et al. 2009: 214).

from straightforward. This is because these processes are composed of a complex set of diverse elements, stages, and actors, which can be found across diverse contexts. The responsibility for producing a constitution can be vested in different types of bodies, ranging from processes directed by executives, legislatures, popularly elected or appointed constituent assemblies, and expert or citizen conventions. Even similar constituent bodies can diverge in the procedures through which they were selected. Their internal working mechanisms and decision-making procedures vary, as do the mechanisms that frame the adoption of a constitution. Timing can vary too, with some processes dragging on over years, as happened in Indonesia, and other ones being much quicker.<sup>33</sup> In Egypt, it took only six months to produce the 2012 Constitution. Under the uniting banner of constitution-making processes, authors have examined issues as diverse as the character of main constituent bodies, the method of their selection, the methods used for the adoption of the constitution, the type of actors involved, ranging from citizens to political elites, executives, legislatures, institutional veto players, and to foreign actors, and their engagement in different stages of constitution-making, from convening and deliberation to ratification (see Ginsburg et al. 2009; Saati 2015; Eisenstadt et al. 2015; Carey 2009; Widner 2008; Maboudi and Nadi 2016). As a result, even where cases appeared broadly similar, as Widner (2005, p. 1536) cautioned, they may have differed in many details.

To complicate the matter further, constitution-making can develop across different contexts, and scholars have too rarely considered these separately to understand the causal stories in play. To give an example, a study looking at the role of representative constitution-making processes revealed that the type of selection

---

<sup>33</sup> Some of these elements were sketched out by, for example, Ginsburg et al. (2009, p. 210). For comparison, see also Brandt et al. (2011, p. 19).

procedures of constituent bodies made a difference to post-ratification levels of violence in Africa, the Americas, and the Pacific Islands. Yet the article showed they had no major effect in other parts of the world (Widner 2005). In short, context can be of “paramount importance”, a conclusion that emerged “most clearly” from a volume of 19 case studies in constitution-making published by the USIP (Miller 2010, p. 604).<sup>34</sup> These distinct aspects of constitution-making processes have then been linked to outcomes as different as the quality of constitutional texts, improvements in the levels of democracy and the reduction of violence. This overall heterogeneity of research agenda, together with the fact that this scholarly tradition is a relatively new one, has complicated the identification of systematic trends and efforts at generalization. To deal with this problem, I restrict this thesis to the specific context of democratization, and in the next chapter (Chapter 3) I clarify the conceptual choices that I made.

Making sense of the causal links has been further hampered by the approximate dependent variables to which processes have often been related. Given the complex nature of processes with regard to the methods, actors, stages, timing, and context, and all the possible interplay between these elements, linking processes to outcomes such as democracy or violence might be, at this stage of development in this field, perceived as overly ambitious. As Widner (2005, pp. 2-3) noticed in her exploration of the influence of constitution-making on violence, while she was able to account for “the most obvious of these influences, as the period under consideration lengthens there is a greater chance that idiosyncratic events specific to a given country or features of

---

<sup>34</sup> Authors of possibly the most elaborate handbook for constitution-makers available, written for Interpeace, shared the same knowledge, arguing that context might matter more for outcomes than the design of the process (Brandt et al. 2011).

substantive terms of a particular constitution” will occur. An alternative approach to solidifying our knowledge about constitution-making might, at least at this point, focus on understanding the impact the design of constitution-making has on more proximate variables. This is the tactic that I take in this thesis, where I identified constitutional agreement as an intermediate step between a constitution-making process, its design, and democracy.

Finally, as with institutional design scholarship, critics of the constitution-making stream of literature have raised other problems, the question of whether constitutional change processes can be designed, and their endogenous effects (Ginsburg et al., 2009; Carey, 2009; Horowitz, 2008; Widner, 2008, p. 1536). Horowitz pointed out that it is difficult to talk about the design of constitution-making, since these procedures are often put together in a haphazard fashion and only a few choices might be available (Horowitz, 2008). This might be the case especially when constitution-making is interlinked with unruly transitions from authoritarian rule (Brandt et al., 2011, p. 18; Horowitz, 1999; 2008; Brown, 2011a, p. 12; 2013b). Even where availability is less restricted, because decisions about the procedures are highly political, they tend not to be designed, but negotiated (Brandt et al., 2011, p. 18). Constitution-making design thus may be contingent on other factors, a situation that can undermine its explanatory function (Pepinsky, 2014). If it is important that constitution-making develops in a certain fashion for agreement on the resulting constitution, we need to know whether options for various processes were actually available, and how the decisions about the course of constitution-making came about. To date, only a very few studies have paid attention to this issue (Offe et al., 1998; Horowitz, 2013; Eisenstadt et al., 2017). This thesis takes the question of the origins

of constitution-making design seriously, integrating it firmly in its theoretical framework.

The first part of this chapter outlined the numerous assumptions about the role of constitution-making processes that have been expressed by scholars and practitioners in this interdisciplinary field, including the impact of constitution-making on democracy and the inclusiveness of constitution-making designs. It also revealed that much room remains for efforts at specifying these assumptions and building solid empirical support for them. This is an especially pressing task with respect to the understudied context of democratization and the involvement of political parties. This thesis contributes to the narrowing of this gap while overcoming some of the common problems faced in research into constitution-making. With that said, it is now appropriate to articulate the theoretical framework that this research explores.

### **2.3 The Role of Inclusive Constitution-making Design during Democratization: Theoretical Framework**

The starting point of this thesis is the argument promoted by the international community in its efforts to build peace and democracy around the world, that constitution-making processes matter. The literature review in the first part of this chapter exposed how academic research has struggled to find empirical support for this claim. However, it also suggested that what might be especially important for democratic consolidation with regard to the process is the involvement of a wide range of political and social forces, be it citizens or other political actors with democratic legitimacy. This thesis focuses on the inclusion of one specific subset of these actors, political parties of the anti-authoritarian coalition.

Transition and consolidation theories, which I discussed in Chapter 1, cautioned us that even though opposition parties may unite to push an autocratic president out of office, they might still represent different political and social interests and be considerably divided among themselves and over the precise institutional framework of democracy. Whether these competing parties find an agreement on a new constitution during a regime change is, therefore, uncertain. The democratization literature also tells us that such an agreement is a critical step on the road to democracy. What this thesis seeks to clarify is whether, and how, the design of the constitution-making process, and in particular the way it promotes inclusion of political parties across the anti-authoritarian coalition, can foster the achievement of a broad constitutional agreement between these parties.

This is an important question. Constitutional agreement is worth studying for its potential long-term implications on democracy, the durability of a constitution, and even on conflict reduction. It has been defined by the early transition and consolidation theories as a necessary, although of itself insufficient, condition if democracy is to take root and thrive. In addition, as I indicated above, it has also featured in the theorization of constitution-making and in policy work. Even where citizens participate in producing the constitution, it is difficult to imagine that in the long run a constitution would last and violence reduce if the text provoked conflicts between key political parties at the time of its approval. Moreover, considering constitutional agreement as the outcome has methodological benefits. It enables us to break down the long, and often abstract, causal chains supposed by large-N studies, and to empirically test, on a smaller scale, the role of the constitution-making process and its design.



The following analysis pays special attention to the origins of constitution-making design and to the context that countries face when constitutional change is intertwined with transition from authoritarianism and former opposition parties are split between themselves and over the text of the constitution. Focusing on forces and factors that shape what constitution-making process emerges deals with the caveat that the design might not be an independent cause and that its inclusivity may be contingent on other factors. The second element relating to the context explored implies that democratization and divisions between political parties are the scope conditions of this thesis. In other words, both the expectations that I put forward, and the generalizations that I draw from my findings about constitution-making design are tied to this particular context.

In the remaining part of this chapter, I develop this framework further. I first of all distinguish between two relevant ways in which existing policy-oriented and scholarly literature perceived inclusion of different political forces which serves as a starting point for this exploration. Secondly, I formulate alternative explanations of constitutional agreement and evaluate whether any of them would rule out the potential impact of constitution-making design. Finally, I build on different streams in institutionalist scholarship, the literature on democratization, and the Arab Spring, to formulate assumptions as to which factors might shape the adoption of a particular constitution-making design.

### 2.3.1 Inclusive Constitution-making Design: Being at the Table and Having Influence

If an inclusive process is conducive to constitutional agreement, what degree of inclusion is optimal? When reading both scholarly and policy-oriented literature about constitution-making processes, two distinctive ways in which authors have imagined

inclusivity are apparent, and both are relevant to this research. Distinguishing between them, however, is important as they might potentially influence constitutional agreement in different ways.

At one level, inclusive constitution-making processes have been conceived in the sense of bringing all the relevant political forces to a negotiating table. Writing about the context where constitutional change followed war, Ludsin (2011, p. 276) argued that perhaps:

the single-most important element of the process in determining whether a population and warring parties will accept constitution-drafting as a peacemaking tool and/or the constitution as a peace treaty is inclusiveness. Who serves as the negotiators – how they are chosen, whose interests are represented, who has the opportunity to participate or, conversely, who is excluded from the process – all determine the likelihood of success of the peacemaking/constitution-drafting process.

A similar view was expressed by Elster (2012, p. 160) who understood a constituent assembly that “reflect[s], in miniature, the diversity of the nation” to be “preferable to one that risks excluding significant minorities”. A comparative volume of 19 case studies in constitution-making, published by the USIP, concluded with a remark that several of these cases illustrated “the importance of ensuring that the deliberation and decision-making forum includes all parties whose agreement to constitutional terms is needed for conflict resolution or development of meaningful societal consensus” (Miller, 2010, p. 652). If there was any one international standard identified for constitution-making, Brown reasoned (2011a, p. 2), “it would be that constitutions should be written in a manner that includes all significant political forces”. Following

this logic, ensuring that all the major political parties are involved in the main constitution-making bodies should help to produce a constitutional agreement.

In what is, perhaps, a more pragmatic approach, authors thought about inclusion in a more substantive way. They cautioned against constitutions written by “temporary majorities”, and recommended that potentially divisive issues should be dealt with in a “consensual rather than majoritarian manner” (Linz and Stepan, 1996, p. 81).<sup>35</sup> Others warned of the “disproportionate influence of one political force” (Miller, 2010: 638). In the absence of more theoretical guidance, and to assist in the exploration of this approach, it is helpful to recall Lijphart’s (2012) thinking on majoritarian and consensus models of democracy. Lijphart wrote that the main political institutional rules and practices may be put on a scale where majoritarianism lays at one extreme of the spectrum and consensus at the other. Consensual institutions differ from the majoritarian ones in that they take majority rule as a “minimum requirement” but what is sought is to “maximize the size of these majorities” (2012, p. 2). While the majoritarian model “concentrates power in the hands of a bare majority”, consensus model seeks to “share, disperse, and limit power” (2012, p. 2). In effect, the first one is “exclusive, competitive, and adversarial”, whereas the latter is based on “inclusiveness, bargaining, and compromise” (2012, p. 2). Lijphart (2012, p. 296) suggested the consensus model was especially well-suited for democratizing countries undergoing a constitutional reform. If we adapt this model to constitution-making processes, we would expect that a constitution-making design that maximizes

---

<sup>35</sup> In a similar vein, Schmitter (2001, p. 10) recommended that the body responsible for drafting the constitution should make decisions by the “largest possible margin,” not by the “minimal winning majority”. Horowitz (2013, p. 294), whom I quoted above, recommended the criterion of “maximum consensus” to guide constitutional change in divided societies.

the leverage of smaller parties would be more conducive to a broad constitutional agreement.

In the next chapter (Chapter 3), which elaborates on the key concepts of this thesis, I draw a distinction between formal inclusiveness that equates to being at the negotiating table, and substantive inclusiveness, which relates to the parties' ability to shape the text of the constitution. It can also be the case that parties view the inclusiveness of a constitution-making process through different lenses. To gain an insider's perspective, I therefore also consider participants' perception of inclusiveness.

### 2.3.2 Alternative Explanations of Constitutional Agreement

Even if we find that the constitution-making design was highly inclusive, can this fact alone explain constitutional agreement? In the case study of Tunisia, which serves here as a typical case,<sup>36</sup> I take into account alternative explanations for agreement that have been raised in both theoretical literature on democratization and in existing research on Tunisian transition. To begin with, the distribution of power among the political forces that are to agree on the constitution might have a bearing on whether they manage to do so or not. Although it is usually not explicitly theorized by scholars of transition and consolidation literatures, balance of power figured as an important condition motivating political elites to negotiate pacts and institutional agreements (O'Donnell and Schmitter, 1986; Przeworski, 1988, p. 64; O'Donnell and Schmitter, 1986, pp. 69-73; Stradiotto and Guo, 2010). O'Donnell and Schmitter (1986, p. 44) theorized that pacts were most likely in situations where the balance of power was

---

<sup>36</sup> For more detail see the methods section at the end of Chapter 3.

such that competing parties could not do without one another and “unilaterally impose preferred solutions”. Imbalance has been seen as dangerous for democratization, especially if smaller parties are not given enough assurances and have an alternative option “of subverting democracy or provoking others to subvert it” (Przeworski, 1991, p. 31; see also O’Donnell and Schmitter, 1986, pp. 71-3).

Writing about the Arab uprisings, Brownlee et al. (2015) listed the power distribution between Islamists and non-Islamists following the first democratic elections among the most important factors which they saw as explaining why democracy eventually flourished in Tunisia and not in Egypt. They argued that in Egypt, Islamists were stronger and consequently could “ignore their opponents’ preferences when it came to constitution writing”. In contrast, the “relatively balanced” Tunisian political landscape forced Islamists to compromise (2015, p. 197).

Next, observers have highlighted the fact that in Tunisia, progressive thinking and support for liberal democratic values by the leadership of Tunisia’s largest Islamist party, Ennahda, and especially its head Rachid Ghannouchi, coupled with the experience of political elites of cross-ideological negotiations that began before the revolution, facilitated compromise (Stepan, 2012; Stepan and Linz, 2013, p. 23; Brumberg, 2013). These negotiations enabled Ennahda and its secularist opponents to discuss contentious issues and to develop a common position on issues like political pluralism and gender equality (Haugbølle and Cavatorta, 2011, p. 337). According to Linz and Stepan (2013, p. 23), the talks produced a situation in post-2011 Tunisia where “suspicions remain, but most secular liberals do not fear Ennahda badly enough to want to use authoritarianism as a shield against it”. At a more general level, Lijphart (1977, p. 100) has argued that previous experience of accommodation between elites can predispose “political leaders to be moderate and cooperative”. The recent history

of building connections, discussing and resolving divisive issues could have broken down some of the mistrust between antagonistic parties in the anti-authoritarian coalition. Having cooperated successfully once might also have made parties more amenable to further cooperation. If the parties were able to bridge the existing ideological differences, this could have made constitutional negotiations easier. In a similar vein, if the major Tunisian Islamist party was indeed moderate, the ideological difference between Ennahda and its secularist opponents might have, after all, not been that great a barrier.

Furthermore, Tunisian political elites have been applauded for their commitment to dialogue and compromise (Bellin, 2013, p. 3). This view was established during the constitution-making process, when Ennahda made important concessions regarding the constitution and agreed to leave government in response to a political crisis. This commitment was then perceived as having been confirmed after the next parliamentary elections, when Ennahda entered into government with its fiercest secular opponent, Nidaa Tounes. At its extreme, the inclination to dialogue has been viewed not as a choice under the atypical political circumstances of democratization, but as a natural predisposition of Tunisian politicians. As one NCA deputy told me:

Tunisians can disagree, they can be in conflictual and dangerous situations, but [they] don't go to the edge of a cliff. They always get to the point when... [they] discuss, make concessions, and establish consensus, and advance in saving their country... It goes throughout Tunisian history... Tunisians discuss and agree with each other.<sup>37</sup>

---

<sup>37</sup> Author Interview with Mouldi Riahi, NCA deputy, Tunis, 8 October, 2015.

However, the adoption of a compromise strategy should be explained, not used to explain. The idea of “compromise mentality” (Marzouki, 2015) as a uniquely Tunisian inclination has not passed without criticism. For example, Marzouki (2015; see also 2017, pp. 343-52) argued that more than by normative considerations, Ennahda adopted a strategy of “risk avoidance”, because of the explosive national and international political context which the party had to navigate during the transition combined with the party’s history of exile and repression. Others have stressed the role of Tunisian civil society, and above all the role of the labour unions, known under the French acronym UGTT, Union Générale Tunisienne du Travail, in facilitating the dialogue between the political parties (Bellin, 2013, pp. 4-5). The Nobel Prize Committee appreciated Tunisian civil society’s “role as a mediator and driving force to advance peaceful democratic development in Tunisia” amid the 2013 political crisis that jeopardized the constitutional agreement, when it awarded the Nobel Peace Prize to the “Quartet” of organizations that included the UGTT.<sup>38</sup>

The arguments about the balance of power, previous experience with cross-partisan negotiations, and the moderate nature of the major Tunisian Islamist party do not necessarily preclude a significant role for constitution-making design in bringing about the outcome. They only suggest that it might be of lesser importance for constitutional agreement when compared to other factors. This is in line with theoretical accounts. The arguments about the impact of constitution-making design that I showcased in the first part of this chapter have been rather tentative. It has been understood that while well-designed processes can help to minimize problems that are

---

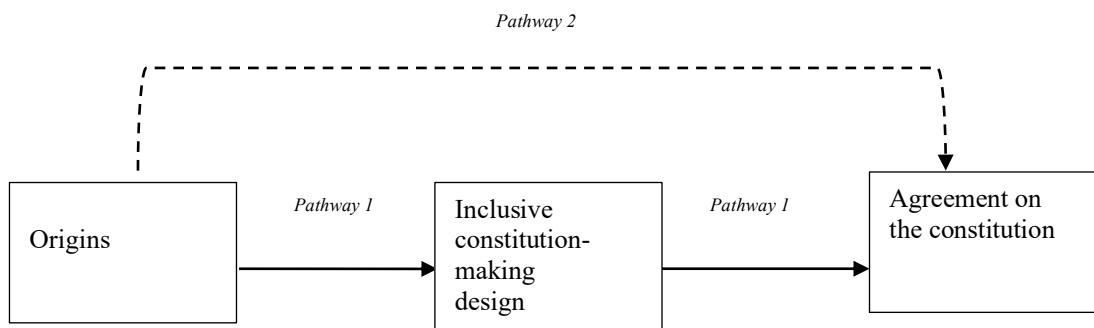
<sup>38</sup> NobelPrize, “The Nobel Peace Prize for 2015”, 10 October 2015, available at: <https://www.nobelprize.org/prizes/peace/2015/press-release/> [accessed 5 September 2018].

endemic in constitutional reforms, in cases where delegates are misguided, even “the best procedures may lead to a suboptimal outcome” (Elster, 2012, p. 149). Therefore, constitution-making design might not be the only, or even the most important, factor influencing constitutional agreement but it can, nevertheless, strengthen the chances for such an outcome. In contrast, if we accept the logic that Tunisians agreed on the constitution because “that is the way they do things”, there might be little rationale for including the constitution-making design as part of the explanation. This is because such political elites should be able to find agreement through any process.

In the last section of this chapter, I address the issue of the origins of constitution-making design, asking the question why some processes are more inclusive than others.

### 2.3.2 Origins of Inclusive Constitution-making Design

Building on institutionalist and democratization scholarships, I distinguish between factors that may restrict and drive parties’ decisions about the procedural side of constitution-making, and develop theoretical assumptions about factors most conducive to inclusive constitution-making design. The expected causal relationships are illustrated in Figure 1 below.



**Figure 1. Theoretical model**



On the one hand, what constitution-making process is chosen is likely to be influenced by the availability of different designs in the first place. In other words, can major political parties in the anti-authoritarian coalition choose from an available range of different types of processes? As I pointed out above, critics of constitution-making scholarship and practitioners warned that constitution-making designs are, in fact, outcomes of complex political processes and negotiations, where the options available may be restricted by the particular context (Brandt et al., 2011, p. 18; 2008; Brown, 2011a, p. 12; 2013b). This brings up concerns about factors that shape how a transition from authoritarianism develops, and above all, who decides how the constitution-making will proceed.

On the other hand, if more types of constitution-making designs are available and relevant political forces can make choices about the constitution-making design, their decisions are likely to be informed by their strategies. These, in turn, can be shaped and motivated by other factors. What conditions make inclusive constitution-making design more likely to emerge? Renwick's (2011) research on the choice of electoral systems provides useful insights into strategies that actors may pursue when having the chance to shape the outlook of important political institutions. Renwick's (2010, p. 11) typology is informed by Tsebelis' differentiation between redistributive and efficient institutions (1990, p. 104). Redistributive institutions are those that improve the conditions of one group at the expense of another. Electoral systems are a typical example. If one party wins more seats, it means, logically, another one will gain less (Renwick, 2010, p. 11; Tsebelis, 1990, p. 104). Power-seeking actors who perceive electoral systems as redistributive institutions would consequently aim to change the electoral system in such a way as to secure these gains for themselves. The design of constitution-making can be conceived in a similar way. Whether power-

seeking parties are able to push through their preferred design then depends on whether they have the power to do so.

However, Renwick argued that under specific circumstances actors can understand electoral systems as efficient institutions that can improve conditions for all, or almost all, individuals (Tsebelis, 1990, p. 104; Renwick, 2010, p. 11). This can happen when they face extreme uncertainty about their future prospects, or when the political system is threatened. Alternatively, politicians can act in ways that are consistent with their ideals and convictions, even though such instances might be rare. This was the case for Czechoslovak dissidents following the 1989 Velvet Revolution, where decisions to introduce a proportional representation electoral system were shaped by values, not by efforts at maximizing their own power (Renwick, 2011). Constitutional politics in the midst of an authoritarian breakdown can also provide a setting in which concerns about the common good can over-ride strategic calculations. Like Renwick (2010, p. 12; also Birch and Millard, 2002, p. 10), I understand that individuals may be guided by a mixture of motivations and that the distinction between acting on normative values and power-seeking may be better imagined on a continuum rather than as a dichotomy, that is, that one does not necessarily rule out the other entirely.

I now chart arguments on three factors that can shape the availability and choice of inclusive constitution-making design, and introduce thoughts on how relevant they might be for the two empirical cases this study considers. These factors are: (1) the availability of constitution-making designs, (2) the distribution of power between political parties of the anti-authoritarian coalitions, and (3) the normative value that political parties and their leaders place on consensus and inclusion.

Additionally, the analysis is cognisant of the immediate political context, the importance of which has been highlighted by much of the policy-oriented literature.

#### *Availability of Constitution-making Designs*

Parties in the anti-authoritarian coalition may not have the absolute freedom to choose the design of constitution-making that they prefer. How the transition from authoritarianism advances, and especially who controls it, may restrict the parties' ability to adjust constitution-making design to their preferences (Linz and Stepan, 1996, p. 71). Interim governments that take power between the start of a transition and its assumption by a freely elected government might be particularly important, as they often have a bearing on the nature of the first elections and their timing, on the constitution-making process, and other interim issues (Shain and Linz, 1995, p. 9). Two types of interim situations tend to occur during a transition (Linz and Stepan, 1996, pp. 71-2). The first one takes place when regime-related actors control the government until the first elections (1996, p. 72). In such a case, how constitution-making will proceed may be either unilaterally decided, or at least influenced by the remnants of the outgoing regime. In the second situation, a transition leads to the establishment of a provisional, interim government (1996, p. 71). Parties of the anti-authoritarian coalition might have more influence over the constitution-making design in such cases. Alternatively, in the messy empirical context of a democratic transition, decisions about constitution-making processes might come together "haphazardly" (Brown, 2011a, p. 12).

*Distribution of Power among Parties of the Anti-authoritarian Coalition*

When warning that political institutions might not be the major explanatory factor in democratizing countries because of their endogenous origins, Kitschelt et al. (1999, p. 12) recommended turning attention to power configurations among those political actors who shape the “institutions and democratic procedures in the formative phase of new democracies”. If political parties are in charge of deciding how the constitution-making process would proceed and how inclusive it would be, their steps are likely to be marked by an effort to maximize their power over the constitution’s content (Renwick, 2011). Whether they would be able to put in place a constitution-making design that would benefit them in turn depends on their standing.

Lijphart (1977, pp. 55-61) has argued that power-sharing institutions of consociationalism, which are close to our concern about inclusive constitution-making, are more likely to emerge in situations under a particular power configuration among relevant groups. He built his theory around the size of segments in plural societies, arguing that a situation of a multiple power balance was more likely to lead to power-sharing than a hegemony consisting of one segment, or a dual balance where two groups are approximately equal in size as, in such cases, they might seek to compete rather than cooperate with each other. A situation of a multiple balance of power, in contrast, means that there is an approximate equilibrium between at least three different groups. Building on this theory, I anticipate that inclusive constitution-making design would be least likely to emerge where the largest party, or a political stream, controls a majority and is hence able to decide the constitution-making design unilaterally. A situation in which a multiple balance of power exists would then be the most conducive to inclusive constitution-making design.

### *Political Elites who Value Inclusion and Consensus*

Even where this is not the case, inclusive constitution-making design can be introduced if relevant parties put a high enough normative value on inclusion and consensus (Renwick 2011). As I demonstrated above, this argument has found considerable support among students of Tunisian politics and local politicians. Conversely, such support for inclusivity has been seen as lacking in Egypt. Amongst the factors that favoured the democratization progress in Tunisia, Bellin (2013, p. 3) listed that the country was endowed with a political elite “committed to the principle and the practice of inclusiveness” and to dialogue. She argued that these qualities of the Tunisian political elites impacted positively on the establishment of an inclusive constitution-making process, as well as the consensual nature of its outcome (2013, p. 3). Marks (2015) juxtaposed Ennahda’s “participation-oriented positions that evinced much thicker understanding of democratic politics” with that of the “majoritarian strategy” adopted by Ennahda’s counterpart in Egypt, the Freedom and Justice Party (FJP). If the argument stands, the adoption of inclusive constitution-making rules may be a function of consensual political culture in its thick version and an inclination to consensus as a value in the particular context of democratization and constitutional politics, in its thin version. Following this logic, even if the constitution-making design did somehow shape the attainment of an agreement on the constitution, it was not a totally independent factor. Rather, parties who valued consensus as a general principle decided to create an inclusive constitution-making design in the first place to attain this goal.

These three factors, the availability of different constitution-making designs to parties in the anti-authoritarian coalition, the distribution of power among them, and the existence of a consensus-oriented largest party, might overlap in shaping the

choice of the constitution-making design. It is not my intention to hold up one of them as the single explanation. Rather, I want to weight their influence against one another. However, I will also pay attention to, and analyse, the political context and country-specific factors in which these decisions emerged.

The same factors that shape a party's strategies in deciding whether constitution-making would be more or less inclusive might impact on constitutional agreement. There is thus a possibility that constitution-making designs are endogenous. In other words, not the constitution-making design itself but factors that led to its adoption might cause constitutional agreement. In such a case, some would argue that the procedural choices for making a constitution have little explanatory value on their own (see Przeworski, 2004; Shvetsova, 2003; Pepinsky, 2014; Kitschelt, et al. 1999). This caveat is especially acute because the channels and procedures that shape constitution-making are not durable institutions but are put in place specifically for the one-off purpose of drafting a constitution.

This thesis takes a step forward from the existing research on constitution-making processes, which in the majority of cases has not dealt with the question of their origins, and assesses what factors were behind the adoption of inclusive constitution-making design. I consequently consider the *Pathway 1* in the theoretical model above (Figure 1). A logical follow up would be to test whether the same factors that led to a particular constitution-making process can also explain constitutional agreement (*Pathway 2*). Although this is an important agenda in its own right, it lies beyond the scope of this thesis.

## **2.4 Conclusion**

In this chapter, I took on the task of reviewing the burgeoning body of literature on constitution-making processes and their design, focusing especially on how scholars have confronted the core themes of this thesis: constitution-making design that is inclusive of political parties across the political spectrum, democracy, and democratization. In recent years, scholars have moved away from the predominant emphasis on the design of macro-political institutions and, instead, begun to explore processes through which constitutions are negotiated, written, and approved. This thesis follows this trend. However, despite growing attention, and the proliferation of comparative research that complements earlier case study literature, I have argued that we still cannot say with much certainty whether constitution-making processes matter and if they do, how. This is most notably because existing research has faced conceptual and methodological challenges resulting especially from a heterogeneous research agenda that scholars in this field have adopted, and the lack of attention paid to the origins of constitution-making designs. Furthermore, I have shown that the context in which constitution-making overlaps with democratization, and the effect of inclusion of a broad range of political parties on democracy, remains underexplored.

In the second part of this chapter, I laid out the theoretical framework of this thesis which concentrates on these understudied themes, while making sure not to fall into the same trap, with resulting problems, that constitution-making scholarship has faced up to now. Specifically, this thesis studies the link between the design of constitution-making processes that promote the inclusion of political parties across an anti-authoritarian coalition, and the constitutional agreement reached by these forces who invariably champion different visions of the configuration of the political regime following the removal of an autocrat. Apart from asking whether, and how,

inclusiveness affects the agreement on a constitution, this thesis also investigates how the procedures for drafting and negotiating constitutions emerge, and why some countries end up with more inclusive processes than others. I utilize this theoretical framework in Chapters 4 – 7. Before that, the next chapter (Chapter 3) unpacks these issues further by specifying the key theoretical concepts, and by introducing the methods that guide the empirical exploration and the data it builds on.



## Concepts, Methods and Data

The underlying issue that this thesis explores is the linkage between constitution-making design that encourages the inclusion of political parties of an anti-authoritarian coalition, and their ultimate agreement on a new constitution. In the previous chapter (Chapter 2), I introduced the theoretical framework that guides the analysis in the remainder of this thesis (Chapters 4-7). Before that, however, this chapter (Chapter 3) clarifies key concepts. I first of all introduce the context in which the central causal relationship may be theorized, democratization, and clarify what I mean when I use the phrase, “political parties of the anti-authoritarian coalition”. I then turn to the main outcome explored in this thesis: constitutional agreement. Next, I elaborate on the main explanatory factor: constitution-making design and inclusiveness, the importance of which is tested in this thesis. Finally, I conceptualize additional factors that might influence the adoption of a particular constitution-making design. These are the availability of different designs, distribution of power among parties of the anti-authoritarian coalition, and the value that they place on inclusion and consensus. I close the chapter by explaining the choices of research methods, empirical cases, and data upon which the analysis builds.

### 3.1 Defining the Context: Democratization

This thesis concentrates on constitution change processes following popular revolutions that initiated democratic reforms. Democratization is, therefore, the context in which constitution-making plays out. I understand democratization to be

composed of two distinct processes: democratic transition and democratic consolidation. While a country has to complete a democratic transition so that it becomes meaningful to speak about democratization, democratic consolidation, in the sense of maintaining the progress towards democracy achieved during transition and hence avoiding a breakdown in democracy or its erosion (Schedler, 1998; Brownlee et al., 2015, p. 171), is a longer-term aspiration. I define the underlying concept of democracy in accordance with the procedural, unextended, minimum definition which is the standard in comparative politics.

### 3.1.1 Democracy

Democracy is a vague concept that has acquired different meanings throughout history and in different contexts. The same can be said about its usage by authors writing in the field of democratization. However, to define what democratic transition and consolidation are, it is first necessary to define democracy as clearly as possible (Munck, 2001, p. 126). There are broadly speaking two major ways in which democracy has been understood in political science. The first group of scholars asks “how?” and is concerned with democracy as a procedure or a method. The second group asks “what?” and focuses on its substance (Moller and Skating, 2013, p. 41).

While within the first tradition democracy has often been seen as a set of institutions or procedures, the most important of which are free, fair and competitive elections, the understanding of the concept in the second tradition is more demanding. Democracy is regarded not just as a method; it also requires a specific content such as socio-economic equality. Since the acquisition of substantive democratic attributes such as social and economic equality is a long-term goal, scholars of democratization, concerned with the development of non-democratic countries into democracies, have

tended to follow the first tradition. Highlighting Schumpeter's (2010) and Dahl's work (1997) in particular, authors have conceived of democracy as a set of institutions and procedures. The other reason for this preference is more practical. While scholars agree, more or less, on what institutions make a democracy, there is much less consensus on what needs to be done, content-wise, for a regime to be called democratic (Collier and Levitsky, 1996, p. 13).

Authors in the procedural tradition nevertheless differ as to the minimum institutional features that are necessary to ensure a viable democracy (Collier and Levitsky, 1997, p. 433). Collier and Levitsky (1996) distinguished between three major trends of how democracy has been conceptualized in this stream of literature: the electoralist definition, the procedural minimum definition, and its expanded version. The least demanding of the definitions, the electoralist one, delimits democracy based on the single criterion of holding "reasonably competitive elections", with broad suffrage, and devoid of "massive fraud" (Collier and Levitsky, 1996). In contrast, for scholars using the procedural minimum definition, not all elections can be counted as democratic. Only those elections that are conducted within a context of civil and political liberties, and through which citizens select the "top political offices of the state", form a democratic regime (Bratton and van de Walle, 1997, pp. 12-3).<sup>39</sup> Finally, the expanded procedural minimum definition has developed from the caution that in some cases, holding elections and providing guarantees for civil and political liberties, might still not be enough to ensure democracy. This is because non-democratic actors, such as wealthy businessmen and military officers, might prevent newly elected governments fully executing their policies. Others,

---

<sup>39</sup> While this is often not made explicit, scholars adding civil and/or political liberties in their definitions often rely on a list put together by Dahl (1971, p. 3).

therefore, added two more conditions to the procedural minimum: that there is no such “non-elected realm” where non-elected actors have a veto power on certain policy areas, and that elected officials do not require the approval of actors outside of their territorial domain, by which is meant the exercise of control by any foreign individual, institution or state, and includes forces of occupation (Schmitter and Karl, 1991, p. 104; see also Moller and Skating, 2013, p. 44).

The definition of democracy that I use in this thesis draws on the procedural understanding of democracy and the trend towards defining democracy in minimalist terms, which is a standard in the field of comparative politics (Collier and Levitsky, 1996, p. 13). Following Levitsky and Way (1997, p. 434), I rely on the procedural unextended minimum definition where a government is selected through “fully contested elections with full suffrage and the absence of massive fraud”, and where such elections are underpinned by guarantees of civil and political liberties as specified by Dahl (1971, p. 3). These include the freedom to form and join organizations, freedom of expression, right to vote, eligibility for public office, right of political leaders to compete for votes, and freedom to access alternative sources of information.

The advantage of the minimum definition is that it allows us to think about democracy after the popular upheavals that in 2010 and 2011 swept the Arab world. Up until that point, countries within that region were known for the resilience of their authoritarian regimes. Keeping the threshold of democracy low opens the way for the comparison of democratization in Arab Spring countries with the processes of democratic change in other parts of the world. This is not to say that the development of other democratic institutions such as independent legislatures, courts and civilian control over the military, which are sometimes added as conditions in extended procedural minimum definitions, are not important. However, I argue, as do Bratton

and van de Walle (1997, p. 8), that these extended elements can be attained after basic democratic institutions have already been established. Taking these additional conditions into account is further complicated by a situation in which we lack agreement on what criteria, exactly, are required for the extended minimum (Munck, 2001, p. 124). Keeping the threshold too low, however, and perceiving democracy exclusively through the perspective of elections would deny its essence. In other words, it would be difficult to distinguish such a democracy from an authoritarian regime that simply utilized elections as mere window dressing. That is why to be meaningful, elections should be competitive, inclusive, and reinforced by civil and political liberties. The conceptualization of a democratic transition and its completion that follows below draw on this procedural minimalist definition of democracy.

### 3.1.2 Democratic Transition

The concept of democratic transition was first introduced by Rustow (1970) in an article, critical of the structure-oriented inquiry into democratization that was dominant at the time (see Chapter 1). However, it was not until the publication of O'Donnell and Schmitter's seminal volume *Transitions from Authoritarian Rule* (1986) that the concept found its place in mainstream democratization literature.<sup>40</sup> In their account, transitions were situations immersed in "abnormality", uncertainty, and with important roles played by individual agency and factors such as "fortuna", where normal political science methodology was inappropriate (1986, pp. 3-5). Put within a timeframe, transitions were seen as intervals "between one political regime and another" (1986, p. 6). It began when authoritarian incumbents embarked on the

---

<sup>40</sup> See, for example, Przeworski (1991), Linz and Stepan (1996), Bratton and van de Walle (1997), Collier (1999), and Doorenspleet (2005).

process of modification of “their own rules in the direction of providing more secure guarantees for the rights of individuals and groups” (1986, p. 6). Transition finishes when democracy or an alternative form of authoritarian regime is installed (1986, p. 6).<sup>41</sup>

While the theoretical account by O’Donnell and Schmitter remains influential, because the boundaries of transitions were not set with any degree of precision, other scholars sought to delineate them more clearly. How they perceived democratic transitions, and especially how they identified its completion, depended on authors’ different understanding of democracy (Munck 2001, p. 123). I draw on two definitions of transition completion that resonate with the concept of democracy introduced above. The first one is less demanding: a democratic transition “can be said to have occurred only when a regime has been installed on the basis of a competitive election, freely and fairly conducted within a matrix of civil liberties, with results accepted by all participants” (Bratton and Van de Walle, 1997, p. 194). The second definition is useful because it breaks down criteria for identifying the completion of a democratic transition. Completion is marked by: (1) “sufficient agreement” about “political procedures to produce an elected government”; (2) the government has to come to power as “the direct result of free and popular vote”; have (3) “*de facto* authority to generate new policies”; and, finally, (4) “the executive, legislative and judicial power” does not have to “share power with other bodies *de jure*” (Linz and Stepan, 1996, p. 3). While the first three conditions might be sufficient for a democratic transition, in the empirical analysis I also ask whether the last threshold, which is based on the extended minimum definition of democracy, has been passed.

---

<sup>41</sup> The authors also stressed that democracy was only one among many possible outcomes of a transition (1986, pp. 3-6).

The concept of democratic transition has been criticized for a number of reasons. There has been a large number of definitions but little consensus as to what exactly it means and what cases it encompasses (Munck, 2001; Schedler, 2001; Plattner, 2014; Diamond et. al., 2014). Horowitz suggests it might be more useful as a category of thought or a container “into which you can pour a lot of useful content”, rather than as a pure concept (Diamond et. al. 2014, p. 94). The difficulty in delineating the confines of democratic transitions led to the emergence of an idea, especially current in policy circles, that all countries undergoing reforms are transitioning to some extent, when, in reality, they are often not moving anywhere but remain stuck between democracy and authoritarianism (Carothers, 2002). This is why, to pinpoint a democratic transition, I rely on the criteria for its completion.

Another critique has been directed towards the way transitions are studied empirically, and to the gap between the theory and conceptualization, on the one hand, and the actual operationalization and measurement, on the other. On the theoretical level, there has been a broad acknowledgement that transitions are nonlinear and multistep processes. Yet, both Munck (2001, pp. 124-6) and LeBas (2011, p. 253) lamented the fact that despite this criticism, most empirical studies continue to capture them as one-shot moments of change where the movement from nondemocratic to democratic regime can be pinned down to a single date. Narrowing transitions down to single moment, Munck (2001, p. 125) argued, lacks the recognition that democratization might proceed at a different pace, developing different attributes of democracy, something that might entail crossing more than one threshold. I deal with this problem on an empirical level by being attentive to the “messy” empirical reality of transition processes. I now need to differentiate the concept of transition from that of democratic consolidation.

### 3.1.3 Democratic Consolidation

Democratic consolidation is a catch-all concept, to which scholars often assign different meanings depending on the context they are studying and their research agenda (Schedler, 1998, 2001). To delineate the boundaries of what it is not, I define it in negative terms as concerns about regime continuity (Schedler, 1998). In this way, democratic consolidation is seen as about avoiding a breakdown or erosion in democracy (Schedler, 1998), and about the maintenance of the democratic progress achieved during the transition (Brownlee et al., 2015, p. 171).

This conceptualization builds on Schedler's (1998) categorization of the different understandings of democratic consolidation that have appeared in democratization literature. He usefully distinguished between negative approaches to consolidation, where authors cared about avoiding a certain outcome, and the positive understanding of consolidation, where authors focused on extending what had already been achieved. In the former stream, depending on their starting point, authors were inclined to view consolidation as: (1) avoiding the breakdown of democracy, or (2) avoiding the erosion of democracy. In the first approach, the goal is to secure what "democrats" have achieved, an important part of which might be curbing various undemocratic actors, including the military or powerful businessmen.<sup>42</sup> The second one pre-supposes that a liberal democracy has already been established and the task is to guard against an incremental decay or lessening of democracy and the creation of

---

<sup>42</sup> Although as Schedler (1998) recalls, even within this stream of the literature "preventing democracy breakdown" does not always mean the same thing. On the one hand, actors with undemocratic motives that authors focus on, might be very different, ranging from guerrillas, to elected presidents, and disenchanting populations. On the other hand, scholars invoke a number of other goals apart from curbing the enemies of democracy and basically "anything positively valued in the name of democracy sustainability".



some kind of a hybrid regime. In contrast, in the positive approach to consolidation, authors look either at: (3) completing the democratic change, for example by moving on from a minimal democracy defined by free, fair and competitive elections to the establishment of institutions of liberal democracy, or (4) deepening democracy, that is, at enhancing its quality.

I expect that constitution-making following the ousting of an autocrat would take place in a situation framed by the negative understanding of consolidation, when political actors focus on the maintenance of the democratic progress achieved during transition, and seek to avoid the breakdown of democracy or its erosion. It is this negative understanding of consolidation that best describes the context in which constitution-making took place in Egypt and Tunisia. This conceptualization is preferable for two additional reasons pinpointed by Schedler (1998). First, positive notions of democratic consolidation can be studied through other concepts, such as the quality of democracy. Second, if we think about democratic consolidation in positive terms, it becomes even more difficult to see an end to consolidation, since there is always space for enhancing the quality of any democracy. In other words, if we accept this reasoning, we accept that most democracies can never be consolidated.

To summarize, in this thesis I understand democratization to be composed of both democratic transition and consolidation. While I rely on a definition of democratic transition completion to analyse whether we can frame a particular context as democratization, consolidation of democracy, which I describe in negative terms, is regarded as a longer-term aspiration. It is in this context of democratization that political parties of the anti-authoritarian coalition, which I examine in the next section, struggle to negotiate a new constitution.

### **3.2 Defining Actors: Political Parties of the Anti-authoritarian Coalition**

This thesis explores the inclusion of parties of the anti-authoritarian coalition in the constitution-making process and their agreement to constitution. Przeworski (1988), who coined this term, used it to underline the point that former opposition forces and new ones emerging during a transition, who together formed the anti-authoritarian coalition, usually struggled on two fronts. To eliminate the old regime, they had to unite against it. However, shaping the new democratic regime to meet their preferences often meant turning against each other when competing interests came into play. This thesis adapts this notion, but limits it to refer exclusively to political parties. This is consistent with the theoretical framework that I presented in Chapter 2, as well as with transition and consolidation scholarship introduced in Chapter 1. Given the nature of the constitution-making processes, in both my case studies, it was political parties that retained the most influence in the process, and whose agreement on the new constitutions was essential. This is not to say that other groups, including civil society organizations, revolutionary and activist groups, were not important in the process of reaching constitutional agreement. Nevertheless, they remain at the margins of this thesis as the main focus is on the inclusion of political parties and the process by which they reached agreement. In line with Sartori (1976, p. 63), I define a political party as “any political group identified by an official label that presents at elections, and is capable of placing through elections (free or non-free) candidates for public offices”.<sup>43</sup>

---

<sup>43</sup> By this definition, the Civic Forum that run in the 1990 parliamentary elections in Czechoslovakia that followed the 1989 Velvet Revolution could be said to be a party, despite the fact that its members, for whom a word ‘party’ had a negative connotation, disavowed the term.

Two types of parties are identified as being part of the anti-authoritarian coalition: opposition parties formed prior to the revolution, and newcomers established during the transition period. To identify the first group of parties, I rely on the definition of opposition in the context of Middle Eastern authoritarian regimes fashioned by Albrecht (2010). He described opposition as “an institution located within a political system but outside of the realm of governance that has decisive organizational capacities and engages in competitive interactions with the incumbents of a political regime based on a minimum degree of mutual acceptance” (2010, p. 3). This definition allows me to take into account opposition parties that were co-opted by the regime for limited periods and participated in legislatures but were never involved in the government. It also allows for the inclusion of any illegal opposition group whose members might have been in jail, hiding, or abroad. Given the influx of new political parties that is characteristic of transitions, restricting the anti-authoritarian coalition to former opposition groups would not enable me to account for some of the major political forces whose agreement on the new constitution was vital for democratization, even though they did not organize themselves under the outgoing regime. Newly formed political parties qualify as members of the anti-authoritarian coalition where they are not directly related to the former ruling parties. This could be the result of having key echelons of the party coming from the ranks of the former ruling party, or by directly claiming, for example in their programme, that they saw themselves as the inheritors of the legacy of the ruling party.

The following analysis will focus primarily on what I call the major political parties. This is a pragmatic decision. Dozens of political parties emerged from the uprisings in Egypt and Tunisia, and accounting for their individual involvement in the constitution-making process would add little value to the overall analysis. I, therefore,

take into account only parties that won seats in the first democratic elections following the revolutions, and mark as marginal those whose share of seats or contribution to the debate about the constitution was minimal for reasons other than controlling a few seats. Focusing primarily on parties with representation in the legislature is a necessity in countries where party systems are still in the making and not yet institutionalized. In such cases, elections might be the first and only clue to the parties' standing in society. However, to ensure no important actor was omitted, I take a case sensitive approach to the identification of potentially influential parties so that all relevant parties are captured in this conceptual net.

This thesis assumes that an agreement on the new constitution between the parties of the anti-authoritarian coalition is essential for democratic consolidation but also difficult to attain because of the potential divisions between themselves and/or because of their divergent preferences for the new political institutional framework. To understand the nature and the quality of divisions between the parties in the coalition, I inquire into the main political cleavages. I consider the relevance of seven dimensions of programmatic differences: socio-economic, religious (dividing secularist and religious parties, or different religions), cultural-ethnic, urban-rural, regime support, foreign policy and post-materialist issues (Lijphart, 2012, p. 77). I assessed which ones were the most relevant, historically and during democratization. The next section defines the concept of constitutional agreement.

### **3.3 Defining the Outcome: Constitutional Agreement**

To define constitutional agreement, I deliberate on three questions: (1) What is a constitution?, (2) What degree of agreement is sufficient?, and (3) Which of the elements of the constitution are the most critical components of any agreement on the

constitution? Answers to the first and second questions are relatively non-problematic. In contrast, authors in the two distinct areas of scholarship upon which this thesis builds, constitutional politics on the one hand and democratization on the other, offer different responses to the third question. I draw on both these scholarly streams to break down constitutional agreements into individual elements whose relevance I assess in the empirical analysis.

### 3.3.1 Overall Constitutional Agreement

This thesis adopts a “thin” conceptualization of constitutions. A constitution can be distinguished from other documents based on its form; in other words, we can recognize a constitution when it looks like one. Generally, a constitution is a formal, and written, document, whose text directly specifies that it is a constitution, Fundamental Law, Basic Law, or the highest law (Elkins et al. 2009, pp. 38-40, 49).

An alternative to the understanding of constitutions as formalistic is the functional approach which proceeds by identifying the functions tied to constitutions. In this case, a document can be called a constitution once it performs certain functions. This “thick” conceptualization comprises a broader range of elements that perform functions that can be defined as constitutional, including laws, theories, customs, understandings and interpretations which together create a constitutional order for a particular country (Elkins et al. 2009, pp. 38-39). Its elements may be found elsewhere than in a written constitution and they might precede it in the sense of specific behaviour or cultural traditions that a constitution later ratifies, are developed as a new constitution is drafted, or develop over time, as the constitution is put into practice and interpreted (Elkins et al. 2009, p. 53). For example, while parties and elections might be essential for the operation of a democratic state, Elkins et al. (2009, p. 52) noticed

that they were often regulated by separate documents, not constitutions.<sup>44</sup> The advantage of the thin conceptualization adopted here, compared to the latter approach, is that it is applicable across cases, as most modern states have formal written charters (Elkins et al. 2009, p. 38). More importantly, it is the formal, written constitution, rather than less formal rules or norms of behaviour, that are the immediate end-products of constitution-making processes.

To assess whether an overall constitutional agreement has emerged, I follow suggestions put forward by scholars of democratization. In particular, I look for negative statements about the constitution by parties of the anti-authoritarian coalition made at the time of its drafting (Higley and Gunther, 1992, p. 7). An indicator of the absence of a broad agreement is “a substantial vote against a constitution motivated by fundamental disagreements” (1992, p. 7). Nonetheless, it is also clear that not everyone has to accept the constitution. In line with Linz and Stepan (1996, p. 3), I maintain that parties of the anti-authoritarian coalition must find at least a “sufficient agreement”. In other words, although a certain degree of disagreement is natural, “deep and continuous confrontation” with “no sign of accommodation” might be problematic as it can hinder democratic consolidation (1996, p. 4).

---

<sup>44</sup> Elkins et al. (2009, p. 52) pointed out that most constitutions in their extensive sample left the task of defining the design of electoral systems to the legislature to law, or did not mention it at all. This was also the case with the legal framework for the functioning of political parties. According to the authors, 47 percent of constitutions did “not even mention political parties” and only 21 percent of them mention central banks. Not all the paragraphs of a final document perform what is generally seen as the most critical functions of a constitution, which is to constrain or enable government, and often deal with supposedly less vital issues such as the symbols of state to be adopted. As Elkins et al. (2009, pp. 52-3) succinctly pointed out, not all that is constitutional is written and, likewise, not all that is written is constitutional.

### *Key Elements of Constitutional Agreements*

The functionalist approach to defining a constitution is, nevertheless, helpful for unpacking the most crucial aspects of constitutions, and informs our understanding of what an agreement on a constitution is about. Constitutionalist literature generally highlights that constitutions, above all, limit the power of the government, define the patterns of authority and set up government institutions (Elkins et al., 2009, pp. 38-40). For instance, Galligan and Versteeg (2013, p. 6) stated that a constitution “establishes a system of government, defines the powers and functions of its institutions, provides substantive limits on its operation, and regulates relations between institutions and the people”, thus performing the functions of constraining and enabling government. Political actors are often expected to clash over the specific paragraphs in constitutions that are related to these functions, such as those defining the executive and legislative branches of government. Other important means of constraining government can be the inclusion of a catalogue of rights into a constitution, along with the institutions necessary to protect them against government incursion, such as supreme or constitutional courts (Stone Sweet, 2014, pp. 151-2).

In addition, especially in societies marked by religious conflicts, clauses relating to other constitutional functions, those that are more symbolic, identity and value-oriented, may be as crucial, and as difficult, to find an agreement on as distributional political institutions such as the type of executives and legislatures (Bâli and Lerner, 2017). As Bâli and Lerner (2017, p. 2) pointed out, conflicts over religious law, identity, and relationships between the state and religion were central to constitutional debates in democratizing Muslim-majority countries such as Tunisia, Egypt, or Indonesia. It proved difficult to find compromises on these issues because they involved long standing patterns of “beliefs, values, and normative commitments”

(Bâli and Lerner, 2017, p. 7). Furthermore, institutions created by religion may compete with political and legal institutions defined by the constitution. For example, while Catholicism raises the issue of the relationship between the state and the Vatican, Islam raises questions about the relationship between Islamic law, sharia, and the state (Bâli and Lerner, 2017, pp. 6-8).<sup>45</sup> Brown (2017, p. 303) argued that the struggles for these symbolic aspects of constitutions, usually manifested in long and heated debates about preambles and basic proclamations, have been on the rise globally, as constitution drafting has increasingly become a public process as opposed to being the preserve of elites who bargain between themselves.

In the democratization literature authors highlighted other elements that were important for an agreement between political forces on the framework of the new democratic regime, although some of these might be found outside of the constitution as defined above. Scholars in this tradition have referred to such agreements by different terms and held different ideas as to exactly what it constitutes.<sup>46</sup> Of these different notions, the closest to the agreement on a constitution as conceived here is its most minimal understanding. For O'Donnell and Schmitter (1986, pp. 69-70), institutional agreement involved three major elements of the new political regime: (1) a regime's inclusiveness or, in other words, the question as to which actors would be permitted to enter political competition, and especially whether "antidemocratic"

---

<sup>45</sup> Islamic sharia is usually translated as Islamic law. However, sharia includes areas of personal conduct not commonly covered by legal systems in non-Muslim countries. These range from questions of ethics and the conduct of prayers, business transactions and inheritance, to criminal punishments and legal procedures. Brown (2012a) thus suggests a "vaguer but more accurate" translation. According to him, sharia can be understood as "the Islamic way of doing things".

<sup>46</sup> E.g. Przeworski (1988) spoke of "institutional compromise", Linz and Stepan (1996, p. 4) mentioned a "sufficient agreement" on "political procedures to produce elected government", and Higley and Gunther (1992) refer to it as a "consensus" on the institutional framework of democracy.



actors would be able to do so, through what threshold, and whether the representation of minority groups would be guaranteed; (2) the type of electoral system, that is the formula used for distribution of seats, and the size and number of constituencies; and (3) the form of government. To this list, Linz and Stepan (1996, p. 4) added the issue of whether the new form of state would be unitary or federal.

This agreement on the political framework of democracy, or as I put it more simply, institutional agreement, can be distinguished from other kinds of pacts and agreements pertinent to democratization, identified in this scholarly tradition. For instance, some authors broadened the meaning of institutional agreements to include more than just the core, institutional elements. On the one hand, this is the case when taking a longer-term perspective into account. In this view, what is important is not only that actors agree on political institutions but that they, too, adhere to them in the long run: that they become habituated to solving conflicts within these new institutional boundaries, and come to expect that others would do so as well (O'Donnell and Schmitter, 1986; Przeworski, 1988; Higley and Gunther, 1992; Linz and Stepan, 1996). Although compliance, habituation, and adherence to the new democratic institutional framework are perhaps crucial if democracy is to last, whether these conditions are present may only be judged once some time passes from the initial agreement on the constitution, and hence it will be left out from the analysis here.

On the other hand, several studies understood the appreciation of the value of democracy and the worth of democratic institutions by political actors also to be crucial for democracy, and that this was interlinked with the agreement on the institutional framework (Linz and Stepan, 1996, pp. 3-4; Higley and Gunther, 1992, pp. 3-4, 32). The authors did not, however, specify what, exactly, an agreement on the value of democracy involved or how it could be differentiated from adherence to

democratic institutions. It may be that elites adhere to democratic institutions because they value democracy but it could also be the case that political actors do not value democracy from the outset but chose to support the installation and maintenance of democratic institutions as a better option compared to keeping an authoritarian system or to drawing the country into a civil conflict. Finally, it is important to distinguish institutional agreements highlighted in this scholarly tradition from an agreement on particular policies or a long-term political course of action, because democracy does not emerge from a substantive compromise, such as an agreement on the type of taxation. Conversely, democracy can be established in places where political actors have conflicting interests and visions about policies they want to adopt (Przeworski 1988, p. 64). However, what they should settle on are the rules of democracy that would specify how they can compete for the right to implement such a policy.

When disentangling the constitutional (dis)agreement in Egypt and Tunisia, I ask what elements of the constitution were the most important for the political parties and, at the same time, the most complicated in terms of finding an agreement on due to conflicting preferences. The elements of the constitution highlighted by the functional approach to constitutions and democratization literature guide this inquiry. In a case in which components of the institutional agreement specified by democratization scholarship were negotiated outside the constitution's scope, I also consider its potential linkage with the constitutional agreement reached. Going beyond the idea of overall constitutional agreements as one-shot moments that either happened or not, and asking about key components, enables me to track how constitutional agreement developed by means of agreements on individual issues over time. The next section defines the main explanatory factor postulated in this thesis, the design of a constitution-making process and its inclusiveness.

### **3.4 Defining the Main Explanatory Factor: Constitution-making Design and its Inclusiveness**

There seems to be no comprehensive, explicit definition of constitution-making processes that a majority of authors employ. Nevertheless, when discussing constitution-making, authors in both the academic and policy world usually specify the object of analysis by delineating activities that it typically entails, and this thesis follows this trend.<sup>47</sup> In this sense, constitution-making can be differentiated from a broader concept of constitution-building that encompasses a longer timeframe and more tasks. To Böckenförde et al. (2011, p. 2), constitution-making is limited to “the period when a constitution is drafted.” Meanwhile, constitution-building involves also “agreeing on the need for constitutional change and its scope”, “establishing institutions, procedures and rules” of constitution-making, “giving legal effect to the constitution and ratification”, as well as the stage of implementing the constitution. Constitution-making, hence, can be seen as an activity directed at producing a constitution, not towards deciding how a constitution would be produced, nor implementing the political institutions that its drafters described in its pages.

The design of a constitution-making process, then, refers to a combination of rules and mechanisms that guide how the production of a constitution develops through the main channels that are dedicated to this task. These rules and mechanisms regulate who is involved in constitution-making channels, when this involvement takes place, and how actors are to proceed with producing a constitution (Ginsburg et

---

<sup>47</sup> For instance, Ginsburg et al. (2009) specified they were interested in “conditions and rules under which founders write, deliberate, and ratify” constitutions. Carey (2009, p. 155), studying the impact of inclusive constitutional moments, asked about processes whereby constitutions were drafted and adopted. The study of public participation by Eisenstadt et al. (2015) focused on three stages of constitution-making: drafting, debating, and ratification.

al., 2009, p. 204; see also Elkins and Ginsburg, 2013). We can imagine the rules and mechanisms that frame the production of constitutions playing out across three constitution-making stages: convening, debating, and approval.<sup>48</sup> Convening here refers to “selecting those actively and directly involved in crafting the constitution’s content”, debating concerns the method for making decisions “about content and retentions and omissions from the text”, and approval refers to “procedures for approving the constitution” (Eisenstadt et al., 2017, p. 28).

Constitution-making usually proceeds through formal channels dedicated to that task, such as constituent assemblies.<sup>49</sup> In these cases, the conduct of constitution-making is likely to be enabled and constrained by formal rules (Lowndes and Roberts, 2013, pp. 49-62). An example of such rules are electoral mechanisms that shape who is included in this body and who is not, the internal organization of the body and its decision-making mechanisms, and the rules that guide how a constitution is to be adopted once its text is finalized. We should be able to find these rules formally specified in one or more documents, such as the electoral law, by-laws of a constituent assembly, and so on. However, there might be other channels through which parts of the constitution are produced, which may be as critical as more formal ones for shaping the content. As with informal institutions, they might be “created,

---

<sup>48</sup> These stages are adapted from the book by Eisenstadt et al. (2017) on public participation in constitution-making processes with one alternation. The authors referred to the last stage as “ratification” not approval, and maintained that this stage consisted not only of the “procedures for approving the constitution” but also of “making it binding for all citizens, including those who did not participate in its creation” (2017, p. 28). However, if understood in this broader sense, the definition would erase the difference between thinner concepts of constitution-making and thicker ones of constitution-building.

<sup>49</sup> Elster (1995, p 373) even referred to constitution-making straightforwardly as to an activity happening in constituent assemblies.

communicated, and enforced outside officially sanctioned channels” (Helmke and Levitsky 2006, p. 1) and less visible or formally articulated, but their existence would nevertheless be acknowledged by actors (Lowndes and Roberts 2013, pp. 47, 58-62). They can be more difficult to spot than formal channels and, in addition, as their conduct can be regulated by means other than written rules, qualitative inquiry is essential for identifying them and their importance in the overall constitutional change process.

The design of constitution-making should not be conflated with the conduct of constitution-makers, which it constrains and enables. The design of a constitution-making process is different from the specific activities involved in constitution-making and is analogous with the difference between electoral systems and electoral competition. An electoral system encompasses formal rules that define what it is that parties are competing for, as well as how they compete. They frame the activity of electoral competition but are not identical to it. Further, a design is different from the general mode of constitutional change, such as whether it develops in a consensual fashion. This is important because while many accounts of constitutional change highlight the benefits of consensual constitution-making, they often do not make it clear whether they focus on actors’ ability to compromise, or on rules and mechanisms that incentivize consensus, for example, by requiring greater majorities than the simple 50% plus one to pass articles within the constitutions (Linz and Stepan, 1996, pp. 81-3). As this thesis focuses on the question whether the design of constitution-making matters for constitutional agreement, distinguishing between actors’ ability, or inclination, to compromise and the process that might shape their actions, is essential. Having specified what constitution-making is and how it is different from the design

of a constitution-making process, I can now define inclusiveness and constitution-making design that promotes it.

#### 3.4.1 Substantive, Formal and Perceived Inclusiveness

At a general level, three criteria confine what inclusiveness constitutes: who are included, how they are included, and when that inclusion takes place. What this thesis primarily explores is the inclusion of parties across the anti-authoritarian coalition in the process of producing a constitution, as defined in the previous section. To specify how these parties are included in constitution-making, I return to the distinction between two types of inclusiveness present in both academic and policy discussions about constitution-making that I identified in Chapter 2. I have argued that even though this distinction is not explicitly theorized, authors usually refer to the inclusion of political elites, either in terms of bringing all relevant political forces to the negotiating table, or as the necessity to give them substantive influence over the constitution. Building on this distinction, I separate two types of inclusion: *formal inclusion*, which simply captures the fact that a political party is a participant in main constitution-making channels, and *substantive inclusion*, which refers to the ability of a political party to influence the actual shaping of a constitution. In addition to these two categories, the empirical analysis also assesses the *parties' perceptions of inclusiveness*, which captures how leading members of the relevant political parties, themselves, judge how their party was involved in the constitution-making process.

I understand formal inclusion as a dichotomous concept, where a political party is either granted a membership in the constitutional negotiations, or it is not. What matters is whether a party is included, through its presence, in the process of constitution-making. While the actual numbers of deputies that a political party has

within a constitution-making body might be an important indicator in terms of the influence it has over the content, these figures become irrelevant when we want to know, simply, whether a party takes part in the process or not. For example, a deputy for a given political party can be either a member of the constituent assembly or not; he or she cannot be a deputy to a greater or lesser extent than another deputy. In contrast, substantive inclusion, which refers to the political influence or leverage a party has on shaping the constitution, is a matter of degree. In other words, some parties might have more power over the drafting of the constitution than others. This assertion is similar to that of Reynolds' (1999, p. 60) category of actual inclusion which is, however, tailored to involvement of citizens and not political elites through electoral systems and refers to whether "the citizenry have an influence on the process through which life-affecting decisions are made".

The analytical distinction between formal and substantive inclusion is important as the two modes of inclusiveness may trigger different causal mechanisms through which they can influence the agreement on a constitution. For instance, just being a member of a body in charge of writing a constitution without having any actual influence over its content might make members of a political party feel excluded and negatively impact on the prospects for agreement. It also may be the case that the simple fact of being a member of a constituent assembly and meeting political rivals on a daily basis may help building relationships and confidence among members of political parties who might have previously distrusted one another (Samuels, 2006a). While being analytically distinct, two modes of inclusion are hence also fundamentally related. The less demanding formal inclusion is a necessary, but not sufficient, condition of substantive inclusion. Only those who have attained the formal

membership in the constitution-making channels have the power to shape the constitution.

Which parties are formally included in constitution-making and how much they can shape the constitution depends on the constitution-making design, as well as the electoral popularity of each party. A minor political party that enjoys little electoral support can find it difficult to shape the text of the constitution. Nevertheless, a constitution-making design that promotes substantive inclusion can still make it difficult for a party or a political current with a small majority to pass decisions against the will of a minority. In this sense, inclusive constitution-making design is similar to Lijphart's (2012, p. 2) consensus model of democracy in that it takes majority rule as a "minimum requirement" and aspires to "share, disperse, and limit" power over the constitution's content.

At the convening stage of the constitution-making process, this might be done by using a formula that translates parties' electoral popularity proportionally into seats in the main constitution-making channels (Carey and Reynolds, 2011). At the debating stage, the internal organization of the main constitution-making channel, such as a constituent assembly, can help to strengthen the voice of smaller parties in negotiations. In this regard, Brown (2011a, p. 11) has urged researchers and policy-makers to pay close attention to the committee structure, as it is where "a lot of the detailed drafting gets done". In particular, he recommended that most major groups and orientations should be represented on committees, that decision-making rules favour consensual approaches, and that the chairmanship of the committees rotates (2011, p. 11). Finally, at the approval stage, the size of the majority necessary to approve the constitution can be more demanding than a simple majority requirement (Schmitter, 2001; Linz and Stepan, 1996; Miller, 2010; Lijphart, 2012). In Nepal, for



example, constitution-makers were intended, initially, to adopt the constitution by a consensus which meant that while abstentions were allowed, no one could vote against a particular provision. Even if total consensus could not be achieved, a majority of two thirds of all eligible members, not those voting, was still required to secure approval (Miller, 2010, pp. 197-8). Smaller parties can be given further safeguards against constitutions written by “temporary majorities” (Linz and Stepan, 1996, p. 81) in a form of a popular referendum.

### 3.4.2 Operationalising Inclusiveness

*Formal inclusion*, or inclusion as membership, can be evaluated by looking at the composition of the main body responsible for producing a constitution. In my two cases, these were the constituent assemblies created shortly after the revolutions, the Tunisian National Constituent Assembly and the Egyptian Constituent Assembly. Their membership is indicative of whether all the major political parties of the anti-authoritarian coalition took part in constitution-making or not. I was interested in whether these parties were formally included in other important, and perhaps less formal, constitution-making channels. Further, if a major political party was missing from the main constitution-making channel, I asked whether this was due to the particular design of the process at the convening stage, such as that members of that party were not selected to the constituent assembly, or for other reasons, for example, because the party decided to boycott these negotiations. To reach a conclusion on formal inclusiveness, I consider the following questions:

- Do all the major political parties of the anti-authoritarian coalition have members in the constituent assembly?

- Do members of all the major political parties of the coalition participate in other constitution-making channels? (This question was asked in case these arenas were important in terms of influencing the text of the constitution.)
- Is any major political party of the coalition excluded from constitution-making, by being refused membership in the main channels through which the constitution is negotiated?

*Substantial inclusion*, in turn, can be understood as the influence a political party has over shaping the text of the constitution. That level of influence depends on two main criteria: (1) its electoral popularity, and (2) the constitution-making design, and in particular the mechanisms used for selection of members of the main constitution-making channels, internal organization of the constituent assembly, and approval mechanisms. To assess a party's capacity to influence the constitution, we need to know not only how many seats it has in the main constitution-making bodies, but also what it can do with that influence. Constitution-making design that promotes substantive inclusion is not necessarily characterized by each party being an equal partner in the process of producing the text. A highly inclusive design would be one where the strongest party is not overrepresented, where the internal organization of the constituent assembly does not undermine the voice of smaller parties, where the required size of majority for the adoption of the constitution is maximized, and where smaller parties are granted safeguarding mechanisms that they can use if a majority is strong enough to push through a constitution against their will. In investigating substantive inclusiveness, I consider the following questions:

- Is the number of seats that parties receive in the main constitution-making channels proportional to their electoral popularity? Is the strongest party

significantly overrepresented, or smaller parties significantly underrepresented?

- What is the internal organization of the constituent assembly? How do constituent commissions or other, less formal, constitution-making channels make decisions regarding the content of the constitution? Are these adopted by a vote and if so, what majority is necessary for approval?
- What majority is required to pass the entire constitution? Does that majority have to be greater than a simple majority?
- Are there any safeguarding mechanisms, for example, procedures a party can use when it disagrees with the constitution, such as a referendum?

The first question deserves further explanation. To assess (dis)proportionality, I draw on Lijphart's (2012, p. 144) definition, where disproportionality refers to the difference between a party's vote share and its seat share. Achieving precise proportionality, that is, a situation where "every party wins seats in exact proportion to its share of the votes",<sup>50</sup> is unlikely even if electoral systems based on proportional representation principle are used (Lijphart, 2012, p. 131). This simple measurement is sufficient for the research purposes of this thesis. There is no need to assess the aggregate of vote-seat share across parties as what I am particularly interested in is whether larger parties are overrepresented, or not, vis a vis smaller parties.<sup>51</sup> I evaluate,

---

<sup>50</sup> Renwick, A., "Electoral disproportionality: What is it and how should we measure it?" Politics at Reading blog series, 29 June 2015, available at: <https://blogs.reading.ac.uk/readingpolitics/2015/06/29/electoral-disproportionality-what-is-it-and-how-should-we-measure-it/> [accessed 22 April 2018].

<sup>51</sup> Measuring proportionality of electoral scores has been an area of large-N comparative studies. In most cases, scholars sought to assess the extent to which different electoral systems produce proportional or disproportional outcomes. Different indices have been developed to assess the proportionality of results produced by competing electoral procedures. In his recent study, Karpov

negatively, a situation when the largest party gains considerably more seats in the constitution-making channels than votes. In contrast, if smaller parties receive more seats than votes, it can be viewed positively in terms of enhancing their ability to impact the constitution and, therefore, their substantive inclusion. For the purposes of my assessment, I ask whether the percentage of seats that each party controlled in the relevant constitution-making body corresponded to the percentage of votes it received in the first democratic elections after the fall of Mubarak and Ben Ali. In Tunisia, where the NCA was popularly elected, a comparison of parties' vote share with their NCA seat share, and evaluating whether the strongest party was, or was not, overrepresented, is viable and appropriate. This is, however, more difficult to measure in Egypt, where an appointed CA was, apart from partisans, composed also of experts and other individuals. In that case, I assess proportionality only with the CA's partisan component and use a more qualitative approach for the rest of the Assembly.

In addition to these two forms of inclusivity, this thesis assesses a special category on *parties' perceptions about inclusiveness*. This is to take into account the perspective of leading members of the relevant political parties about the inclusivity of the constitution-making process, and to better understand: (a) what inclusiveness meant to them and what they saw as an ideal inclusive process under their particular circumstances, and (b) to identify if there were any potential informal barriers to their

---

(2008) identified as many as 19 different indices for measuring disproportionality, and his list was not exhaustive. Renwick attributed this heterogeneity to the lack of agreement on what disproportionality actually is. This is clear from looking at the indices listed by Karpov. Some measure the absolute deviation from proportionality (i.e. assign a large deviation and a group of small deviations the same value) while others differentiate between large and small deviations between the vote and seat share. However, for the purposes of this thesis a simpler way of measuring proportionality is sufficient. See Renwick, A., "Electoral disproportionality: What is it and how should we measure it?" Politics at Reading blog series, 29 June 2015.

ability to impact the constitution which might have gone unnoticed in this research. I gathered this information through interviews with party officials involved in the constitution-making process. I tapped into their perceptions by asking indirect questions, such as “What do you think about how the constitution-making processes was organized and how it proceeded?”, “What were the main problems you faced during constitution-making?”, and “What were the main negotiating channels?”.

Having defined constitution-making, its design, and inclusiveness, I now turn to the last set of key concepts employed in this thesis. These are the factors which I singled out in Chapter 2 as being the ones that might influence what kind of constitution-making design is put in place during democratization.

### **3.5 Origins of Constitution-making Design**

Apart from investigating whether constitution-making design matters, this thesis also seeks to explain why a particular constitution-making design is put in place and, above all, why some are inclusive and others less so. I consider three different factors that might affect which design is adopted: availability, distribution of power, and normative value that parties assign to consensus and inclusion. *Availability* relates to whether parties of the anti-authoritarian coalition can choose from different designs. Their choices might be limited when other actors, such as interim governments composed partially or completely of incumbents of the outgoing authoritarian regime, are involved in framing how constitution-making would proceed. It might also be that, under the particular context of a transition, more choices are either not available or non-viable. To inquire into availability, I ask the following questions: Who makes the decision about the constitution-making design? Are parties involved in this process, and if so, are different designs available to them?

If parties are involved in designing the constitution-making process, the choices they make, and whether they are able to push through their preferred process, can depend on the *distribution of power* between them. To inquire into the relative strength of individual political parties, I rely on several types of measurement. I consider the percentage of votes that each political party received in the first legislative elections, or the percentage of seats for each party or party bloc if the former is not available. If alternations to constitution-making design were introduced at a later date, I also examine whether the distribution of power changed. However, during democratization, where party systems are not consolidated and permanent political institutions are in the making, the relative strength of parties and their ability to adjust constitution-making design to their own preferences might also be structured by the context of the transition and, in particular, the forums in which these decisions take place (Birch and Millard, 2002, p. 20). I take this possibility into account.

Even in situations where the largest party or a political stream is strong enough to attain the constitution-making design it prefers, inclusive constitution-making can be initiated if its leading members assign a *normative value to consensus and inclusiveness*. Yet normative convictions are difficult to prove. Party leaders might express that consensus has always been their priority, even when the choice of inclusive process, in fact, resulted from a strategic decision motivated by other considerations. In a similar way, Benoit and Schiemann (2001, p. 157), in their study of the choice of electoral system during a democratic transition in post-communist Hungary, made the caveat that parties often use arguments about the general good only to defend their interests. In the cases where party leaders explain their choices by normative justification, I ask whether this conduct could not be better explained as being the result of strategic calculations or other constraints. Before applying these

concepts in the empirical exploration, I should say more about research methods, case selection, and the data with which I work.

### **3.6 Methods, Case Selection, and Data**

To probe the role of constitution-making design during democratization, this thesis employs a comparative research method in combination with within-case analyses of two cases of constitutional change, Egypt and Tunisia after the 2010/11 uprisings. The remaining part of this chapter explains the comparative logic, the rationale behind selecting these two cases, and the type of data that I use, how I gathered and analysed it, and how I considered research ethics.

#### **3.6.1 Method and Case Selection**

This thesis employs a small-N comparative method and the Most Similar System Design (MSSD) in particular. The MSSD is based on a comparison of cases that are as similar as possible and allows the researcher to “identify the key features that are different” and can, therefore, be used to account for differences in political outcomes (Landman, 2017, p. 74). This method is considered to be stronger than its alternative, Most Different System Design (George and Bennett, 2005, p. 81; Landman, 2017, p. 83). Further, it is suitable for the study of countries within one geographical region that share historical and cultural features (Landman, 2017, p. 75). However, given the number of potentially similar cases that can be chosen from is limited, the method usually implies a comparison of a small number of cases. The downside, then, is that inferences that can be drawn from such comparisons are relatively weak (Beach and Pedersen, 2016, p. 239). This is why any small-N qualitative analysis remains centred on within-case processes (Collier, 2012, p. 87). Even as the narrative proceeds mainly

through within-case analysis, to be considered comparative, it is important that the same questions are asked in each case to guide data collection (2005, p. 67). This combination of within-case analysis and cross-case comparison is, according to George and Bennett (2005, p. 18), “the strongest means of drawing inferences from case studies”.

The advantage of the case study approach is that it allows for high levels of conceptual validity in the sense that concepts can be operationalized in such a way that they closely represent the theoretical concepts and, in addition, provide better indicators to fit the cases under study. By studying only a few cases, researchers can gain a deeper understanding and provide more nuanced answers to the questions posed (George and Bennett, 2005, p. 19; Landman, 2017, pp. 73-4). Internal validity and richness in case study research, therefore, takes precedence over broad external generalizations. The trade-off is that generalizations, if at all possible, can be extended only to a limited number of cases that share the scope conditions. Nonetheless, the method is well-suited for the research at hand, where there is a relatively limited amount of prior knowledge on the relationship between constitution-making design and constitutional agreement. Case study research comes at the cost of spending considerable time and resources on language training and field research (Landman, 2017, p. 76). To be able to conduct this research, I undertook both French and Arabic classes, and spent several months conducting fieldwork in Tunis and Cairo, which I describe below. I believe that it is the thorough understanding of the empirical reality of the cases acquired through this intensive research, and especially the rich interviews and other primary material that I gathered through having the necessary linguistic skills, that makes this thesis a strong foundation on which further studies of constitution-making design can build.



The thesis compares and investigates the experience of two countries that underwent constitutional change following the recent wave of popular revolutions that swept through the Middle East and North Africa in 2010 and 2011. The Arab Spring countries are of critical importance for the exploration of constitution-making processes because of the attention that both the international community and local actors have paid to them, as I demonstrated in Chapter 1. The popular demonstrations that in December 2010 started in Tunisia, initiated constitutional reforms in Yemen, Libya, Morocco, Tunisia, and Egypt. The last two were selected as case studies because they were the only countries where the protests forced their respective dictators to step down and, at the same time, did not immediately fall into a situation of prolonged civil conflict, as was the case with Libya and Yemen (Brownlee et al., 2015, p. 126). In this thesis, I approach constitutional change that took place between 2011 and 2014 in Tunisia as a typical case in the sense that both the theoretical cause, and the outcome, an inclusive constitution-making design and broad agreement on the constitution, were present. This, together with the fact that I was able to gather invaluable empirical insights, made the case ideal for a more detailed inquiry (Beach and Pedersen, 2016, p. 281).

The Tunisian and Egyptian cases are well-suited for a comparison using MSSD because of additional characteristics that make them similar. They are both situated in North Africa and in the wider region of the Middle East, the majority of their population is Arabic speaking and Muslim, they share a history of European colonial rule, and it was the French who shaped each country's legal traditions. The two were classified as lower-middle-income economies by the World Bank in 2011.<sup>52</sup> In each

---

<sup>52</sup> World Bank, "Data – Country groups", 2011, available at: <http://econ.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20421402~m>

case, the military apparatus was central in forcing their presidents out of power in that year (Bellin, 2012). Finally, parties of their respective anti-authoritarian coalitions were divided along religious lines, and those divisions were reflected in their contrasting preferences for the constitutional text, as well as in mistrust and personal animosities between participants which made for delicate constitutional negotiations.

There is, however, one important difference that sets the countries apart and makes them ideally suited for a comparison and that is the outcome of constitution-making. Tunisia is a case where agreement was reached. The constitutional change, which was initiated as Ben Ali was ousted in January 2011, concluded when the NCA almost unanimously passed the constitution. The case of Egypt, on the other hand, is one of disagreement. There, too, the constitutional process was a product of an uprising that led Mubarak to step down almost a month after the Tunisian President. Despite the approval of the constitution in a popular referendum in December 2012, the document was rejected by non-Islamist parties. The question of what the role of constitution-making design was in bringing about these different outcomes immediately suggests itself.

Of course, this is not the only difference. With 11.4 million inhabitants, Tunisia is a much smaller country than Egypt, with its rapidly growing population which, in 2016, reached nearly 96 million.<sup>53</sup> Nor is Tunisia as strategically important as Egypt, which shares a boarder with Israel and upon which the United States government

---

[enuPK:64133156~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html#Lower\\_middle\\_in\\_come](#) [accessed 10 April 2015].

<sup>53</sup> See World Bank, “Population, total, Tunisia”, Databank, available at:

<https://data.worldbank.org/indicator/SP.POP.TOTL?locations=TN> [accessed 22 August 2018]; and

World Bank, “Population total, Egypt, Arab Republic”, Databank, available at:

<https://data.worldbank.org/indicator/SP.POP.TOTL?locations=EG> [accessed 22 August 2018].

annually sends around \$2 billion in military aid.<sup>54</sup> Finally, compared to the Egyptian military, the Tunisian army is smaller and less entrenched in politics and the economy (e.g. Bellin, 2004; 2012; Abul-Magd, 2018). This presents a difficulty for this research but, as Beach and Pedersen (2016, p. 234) put it, “there is no such thing as a perfect comparison, especially when comparing countries or other complex social entities”. It would be hard to find more broadly similar cases, at least not in this region, with recent experience of bottom-up driven democratization intertwined with constitutional change. Within case analysis can help to identify whether these disparities could have accounted for the differences in the outcome (George and Bennet, 2005, p. 81). I, therefore, decided to proceed with the comparison in spite of these difficulties.

### 3.6.2 Data

To analyse and measure the concepts defined in the first half of this chapter, I worked with both quantitative and qualitative data. The bulk of the qualitative data comprises 56 qualitative interviews with political elites, experts and informants, supplemented by additional informal consultations with journalists, experts and civil society activists, and analysis of over 150 newspaper articles. I conducted the interviews in several rounds in Tunis, Cairo, and Prague between 2014 and 2017. I stayed in Tunis for a month between June and July 2014, for two weeks between September and October 2015, and for an additional two months between October and December 2016. I visited Cairo for two weeks in August 2014. My first trips to both Egypt and Tunisia, from June to August 2014, were designed as pilot research for this project and took

---

<sup>54</sup> The Telegraph, “Most US aid to Egypt goes to military”, 29 January 2011, available at: <https://www.telegraph.co.uk/finance/financetopics/8290133/Most-US-aid-to-Egypt-goes-to-military.html> [accessed 22 August 2018].

place a few months before I was officially registered on the doctoral programme in Warwick. While I was able to travel to Tunisia twice more, and was always well-received by local politicians whom I interviewed, in Egypt, research that investigated democratization and the 2012 Constitution became highly sensitive as the political climate became more tense following the 2013 military takeover. Ultimately, I decided not to return to Egypt after a fellow doctoral student from the University of Cambridge, Giulio Regeni, was brutally tortured and murdered under circumstances that still remain unclear. No one has ever taken responsibility for his death though accusations have been levelled at the Egyptian state security service for carrying out the murder while he was conducting his field research in Cairo.<sup>55</sup> My decision has had implications for my data collection and the way I approached the interview material, which I discuss below. It also led me to rely to a larger extent on media analysis in my inquiry into the Egyptian case.

When analysing the two case studies, I also drew on primary data such as election results and opinion polls, documents, including multiple constitutional drafts, and secondary data in English and French, including existing academic research and reports produced by local and international organizations. I always verified key pieces of information by triangulating between independent sources of data. In the next subsections, I introduce this material in more detail and explain how I collected and analysed it.

---

<sup>55</sup> The Egyptian government has, however, denied any involvement. An overview of the investigation was written for the New York Times. See Walsh, D., “Why was an Italian graduate student tortured and murdered in Egypt? The strange twists in the case of Giulio Regeni’s disappearance in Cairo”, New York Times, 15 August 2017, available at: <https://www.nytimes.com/2017/08/15/magazine/giulio-regeni-italian-graduate-student-tortured-murdered-egypt.html> [accessed 22 August 2018].

### *Data Related to the Tunisian Case*

The interviews that I conducted in Tunisia considered four themes that are at the centre of this thesis: the constitution-making design, its origin, relationships between political parties, and the agreement on the constitution. To explore these aspects of constitutional change, I interviewed members of three groups of actors. These included: (1) the leading members of political parties who were involved in the constitution-making process, (2) representatives of civil society organizations actively implicated in constitutional negotiations, and (3) a final group of experts, such as local and foreign journalists, scholars, and members of non-governmental organizations who observed the constitution-making process. At the same time as analysing the content of interviews I conducted with the first two groups, I used interviews with the final group to deepen my understanding of the wider political context, to gain insider information on the functioning of the NCA and political parties, and to better navigate the selection of my interviewees. Altogether, I conducted 36 individual elite semi-structured interviews and more than 10 interviews with experts, informants and additional shorter consultations. The list of interviews can be found in Appendix III.

In the first group, I interviewed leading members of all the parties that I identified as belonging to the anti-authoritarian coalition, representing different political tendencies from left to right and from Islamist to non-Islamist. In addition, I spoke to representatives of Nidaa Tounes, a party that I identified as staying outside the anti-authoritarian coalition yet having considerable political influence (see Chapter 4). Altogether, I interviewed 23 partisans, the majority of whom were NCA deputies, representing eight different political parties. The figure includes top party officials, and in particular three party leaders and two presidents of parliamentary groups. Additionally, I interviewed NCA President, Vice-President, and the constitution's

General Rapporteur, to name just some of the important positions my interviewees held at the NCA. I also interviewed 11 out of 23 members of the NCA's Consensus Commission (CC), which turned out to be the most important constitution-making channel between the 2013 summer political crisis and the adoption of the constitution in January 2014. I also made sure that I interviewed at least one member from each of the six remaining constituent commissions that functioned within the NCA. Importantly, several of my interviewees had been implicated in the decisions on the course of constitution-making chosen between Ben Ali's fall and the NCA's election, which allowed me to inquire into the origins of constitution-making design. I met with some of my interview partners more than once over the years, resulting in 30 individual interviews.

I supplemented partisan points of view with the perspective of civil society actors actively engaged in the constitution-making process and in the development of the constitution-making design. Among the six interviewees from this group were leaders of two civil society organizations that formed the Nobel Peace Prize winning Quartet, who brokered political negotiations which came to be known as the National Dialogue following the 2013 crisis (see Chapter 6). I also interviewed expert members of the interim parliament, so called Higher Authority for the Realization of the Objectives of the Revolution, Political Reform and Democratic Transition, referred to as the Higher Authority, or HA, who were involved in the debate over the type of electoral system to be used for the NCA election. In addition, while in Tunis, I attended conferences and workshops relating to the political situation following Ben Ali's fall, the constitution-making process, and aspects of the constitution. This strengthened my understanding of the context in Tunisia and enabled me to widen my network, as NCA deputies and other participants to the constitutional process often attended.

The questions that I asked during interviews revolved around the origins of constitution-making design, the most important channels of constitution-making, and the functioning of the NCA. I also covered the most important and the most contentious content-related issues that the protagonists negotiated and why that was so. I enquired as to what were the main problems that they encountered, how the agreement on the key aspects of the constitution came about, and what factors were involved in facilitating the successful constitution-making process. Finally, I investigated the relationships between the parties and the ideological distances, personal divisions, and mistrust they faced. The semi-structured logic of the interview allowed me to be sensitive to the important issues that my interview partners raised themselves, instead of pursuing only those matters that I deemed relevant. I listened attentively to their accounts of what had transpired but remained vigilant, constantly questioned and clarified their statements, and later checked their versions of events against other types of data including interviews with members of other parties, civil society representatives, and expert consultants. This approach to interviewing also meant that I was not able to cover all the themes identified above with all of those interviewed. Nevertheless, thanks to the relatively high number of interviews that I conducted, I was able to ensure that I collected a significant number of points of view on any given topic, from across the partisan spectrum.

The fact that I gathered this data in three rounds helped me to build stronger relationships with those I interviewed, gain better access to relevant information because of the connections that I made, and to compare information on the different political circumstances and individual political trajectories that emerged from these interviews. When my first research trip began in June 2014, before I started the doctoral programme, the NCA was still in place, although deputies' agenda was by

then limited to legislation and controlling the government because the constitution had been passed three months previously. The subsequent field trips took place after new legislative and presidential elections resulted in a change in government as well as in the composition of the Assembly of the Representatives of the People, which replaced the NCA. The set of interviews that I gathered in 2014 was especially beneficial because the participants had fresh memories of the events that had led to the adoption of the constitution. Some of the interviews took place directly at the NCA headquarters in the capital's Bardo Palace. This enabled me to observe how deputies from different parties related to one another and led to my better understanding of the special characteristics of this main constitution-making venue. The next rounds of field research, from 2015 and 2016, proved important as some of my interviewees became more open, having left active politics when their mandate expired. Having sharpened my research focus and gained considerable contextual knowledge, by the time I visited Tunis for the last and the longest round of field research, I was in a position to ask more informed questions and investigate those specific themes I had previously identified as most relevant, at a deeper level. The fact that the sample involves such a heterogeneous and numerous group of actors directly involved in the constitutional change and who were interviewed over an extended period of time provides a strong basis for the analysis and the validity of the inferences that I draw from this case.

On average, the interviews took from an hour to an hour and half. They were all conducted with the informed consent of the interviewees. None of the participants wished to remain anonymous and only a few of them preferred not to be recorded, which I respected. I conducted most of the interviews in French, except when interviewees wished to speak English. When field research is condensed into several hectic visits, it is not always possible to transcribe interviews immediately upon



completion as is ideal. Immediate transcription proved especially problematic for me when I had several meetings logged in one day, usually scheduled to take place in different parts of the city, necessitating time consuming travel to each new location. These issues were exacerbated by the warm weather, which was draining, and by the unreliable public transport system that sometimes made the journeys even longer than planned. In such cases, I always made sure to note my own impressions of the meeting, including the important aspects of context and what I felt were the key points that I had learned. I found these pieces of reflection useful when I analysed the interviews later at the comfort of my desk.

After conducting the interviews and transcribing them, I proceeded to code each one. I did so manually, without using any coding software. The logic was, however, the same. I went through all the interviews and decided on the themes and sub-themes around which to organize them. I then went through the material for a second time, linking individual sentences and paragraphs to the previously identified codes that corresponded to different issues and sections of the chapters of the thesis. That I collected all the interviews, transcribed them, coded and analysed them myself meant that by the time I was writing the chapters, I was extremely familiar with the material.

I also worked with additional primary and secondary resources. Election results and opinion polls were used to assess the electoral popularity of political parties and I analysed the consecutive drafts of the constitution, as well as internal documents produced by the NCA, to supplement the information had I gathered through interviews. While some of these documents were publically available through the local watchdog organization Al-Bawsala, which monitored the work of the NCA, and the Sweden-based International IDEA, others I collected directly from the personal

archives of my interviewees. Although the bulk of this material was in English and French, I had several of these documents translated from Arabic.

I worked with another set of material to identify the main constitution-making channels, and to analyse the NCA's internal structure and the approval mechanisms. Apart from interviews, I relied on reports on the constitution-making process produced by the UNDP and the American Carter Center, data collated by Al-Bawsala, and primary documents, such as the NCA's internal regulations. Next, I delved into the relationship between the political parties, the ideological distance between them, and examples of past cooperation using information from my interviews, as well as from existing academic research on Tunisian opposition parties, written in both French and English. Finally, I read existing scholarship on Tunisian politics and both local and foreign online newspapers to learn about events and any nuances relating to them that might have otherwise slipped my attention.

#### *Data Related to the Egyptian Case*

To analyse the Egyptian case, I relied mainly on analysis of media coverage of events, which I supplemented with interviews and other primary and secondary material. To analyse the constitution-making process, its design and origins, as well as the overall disagreement on the constitution, I conducted a systematic review of over 150 articles from two major Egyptian English medium online newspapers, the *Ahram Online* and the *Egypt Independent*. I limited this analysis to the period between February 2011 and December 2012, the point when discussions on constitutional change began up to the passage of the new constitution. Using a keyword search tool in the newspapers' online archives, I reviewed articles under the keywords 'constitution' and 'constituent', before undertaking a more deliberate search through Egyptian online

dailies. To reduce the risk of potential bias caused by reliance on these media outlets, I also consulted foreign newspapers. Among them, I used especially articles produced by the *New York Times* and *The Guardian*, whose coverage of the events tended to be the most detailed and accurate. The media analysis was important for establishing the sequence of consecutive events and hence the political context in which the constitution-making took place. Following the media coverage of the Constituent Assembly sessions, which were otherwise not made public, allowed me to understand the nature of problems and disagreements with which those involved in drafting the constitution had to deal.

I supplemented this information with 10 elite and expert interviews, nine of which I conducted during the two-week-long field trip to Cairo in August 2014, before I was officially registered in the doctoral programme. The full list of interviews is provided in Appendix III. Given that I was not able to return to Egypt after that date due to the political situation, these interviews, even if rather preliminary in nature, contain useful and unique material. I carried out an additional interview in Prague in October 2017 where, following a number of failed attempts, I managed to arrange an appointment with a prominent member of the Egyptian opposition, Amr Hamzawy, who was visiting my home town for a conference. I applied the same logic to interviewing for the Egyptian case as I had in my interviews for the Tunisian case. Interviews were semi-structured to provide insights into the question of the relationships between the parties, constitution-making design and its origins, and the outcome, in this case the disagreement on the constitution. In combination, they gave me a grasp on the views of the constitution-making protagonists on the constitutional disagreement and its causes, as well as on the most problematic issues that they faced during constitution-making. As the majority of my interviewees withdrew from the

Constituent Assembly before its members passed the constitution, the material enabled me to inquire into their motivation, and go beyond the short explanatory statements that they gave to the media.

The semi-structured elite interviews comprised of leading members of six major political parties who were involved in the constitution-making process, either from within the CA or through other channels. However, while there are a variety of non-Islamist parties within the anti-Mubarak coalition in the sample, I was not able to interview members of Islamist parties due to political circumstances in Egypt in the summer of 2014. At that time, the repression of the major Islamist party, the Freedom and Justice Party, was at its peak. It was unlikely that its leading members were in Egypt as many had left the country and others were imprisoned following the 2013 military intervention. Even if I had travelled to Egypt, I would have considered the risk involved in arranging interviews to be too great, both to myself and to those to whom I wished to speak. Consequently, I had to rely on publically accessible interviews with the leading members of the FJP and their statements made to the media. I always assessed this information based on its source and against other data at my disposal.

While in Egypt, I also conducted two substantive interviews with experts and met for less formal consultations with representatives of international organizations, scholars, local and foreign journalists. I organized some of these consultations prior to conducting my interviews with the idea that by so doing I could make more informed choices about whom to interview. In both selecting and approaching potential interviewees, I drew on my previous experience with conducting field research in Egypt. Between May and June 2013, I spent a month in Cairo to carry out interviews with representatives of the major political parties about the choice of the electoral

system for the 2011/12 Egyptian legislative elections which I used in my M.A. dissertation. This experience provided me with indispensable contacts in the relevant parties and a better understanding of the broader context of Egyptian politics and its main actors.

The interviews usually lasted for an hour, and I recorded those where the interviewee had given consent. Most of these interviews were conducted in English. One interviewee preferred to speak in Arabic and for that occasion I hired an interpreter. When we met in 2014, all my interviewees agreed that their names and affiliations could be made public. As the Egyptian government gradually became more repressive, I considered making the material anonymous, but ultimately decided not to do so. This is because the field work took place a year after the military intervention, by which time the authoritarian nature of the new regime had already become apparent. As a result, my interviewees often made hints, lapsed into ambiguity on more sensitive subjects, or turned down our meetings altogether. The person who spoke the most candidly was Amr Hamzawy, whom I interviewed in 2017 after he was forced to leave Egypt and had moved to the United States. There is no denying that the number and the quality of interviews that I conducted on constitution-making in Egypt are not comparable to those I carried out in Tunisia. The political circumstances impacted both the quality and quantity of the interview material. The way I dealt with this problem was by not relying on these interviews as my main source of data but rather by using them as a supplement, to bring nuance and context to the media analysis.

I analysed additional data, both primary and secondary. I used election results to evaluate parties' electoral popularity. To learn about the issues that eventually led non-Islamist parties to reject the constitution, I supplemented the media analysis and

interviews with an analysis of consecutive drafts of the constitution that had been translated into English by the International IDEA, and assessments of the constitutional debates produced by local and international constitutional experts. Navigating the CA membership, its internal structure, and decision-making mechanisms was rendered difficult by the nature of the constituent body and the general context in which the constitution-making took place. I discuss these challenges in Chapter 6. At this point it suffices to say that I collected this information through a variety of sources including my own interviews, publically available interviews with constitution-making protagonists, newspaper articles, and reports produced by local organizations. To gauge the nature of the relationship between the political parties, the ideological distance between them and their efforts at alliance-building, I relied primarily on the existing scholarly literature on Egyptian anti-Mubarak forces, which is more voluminous than in the Tunisian case. Finally, to assess the progress of democratization and to be sensitive to the political context in which the constitution-making took place, I considered official documents, such as constitutional declarations and decrees produced by the executive during the interregnum before the new constitution was adopted, scholarly literature on Egyptian politics during and after the revolution, and local and foreign newspaper articles. The last section of this chapter outlines ethical considerations linked to this research and data collection.

### 3.6.3 Ethical Considerations

This research was conducted in line with guidelines for the ethical conduct of research published by the Department of Politics and International Studies of the University of Warwick. The essential principle underlying these guidelines is one that should underpin any research activity: the researcher must consider the implications of any

research “for the well-being of participants, the wider community,” and the researcher herself.<sup>56</sup> As part of the First Year Review at the end of the first year of the doctoral programme, I submitted the “PhD Ethics Form” which outlined the ethical considerations of the project, and received approval for conducting this research and fieldwork in Cairo and Tunis. I took a number of actions to protect my interviewees and myself.

Interviewing political elites is potentially less sensitive and harmful than interviewing other groups, largely due to the expectation behind the concept that elites are proximate to power (Morris, 2009, p. 209). As such, interviewing elites has been typically described as a situation where the power dynamic favours the respondents (Morris, 2009, p. 209; Mikecz, 2012). Furthermore, most politicians and civil society representatives with whom I spoke with throughout the course of this research project regularly came into contact with journalists and researchers and, so, were used to being interviewed. This is not to say elite interviewing does not involve ethical issues. Some authors have recently questioned the assumptions about asymmetrical power dynamics in elite interviewing, suggesting power relations to be more complex, and elite interviewing, consequently, to be not as non-problematic (Smith, 2006; Morris, 2009; Lancaster, 2017). Researchers, for example, might not be as ‘powerless’, since they are able to exercise considerable control over the produced narrative by selecting certain excerpts from the interviews and not others. Also, the background of the researcher, for example being a foreigner, might alter the dynamic of the interview (Morris, 2009, p. 214). Throughout the research, I therefore reflected on the question

---

<sup>56</sup> PAIS, “Ethics”, Politics and International Studies, University of Warwick, available at: <https://warwick.ac.uk/fac/soc/pais/currentstudents/masters/academic/mahandbook/regs/ethics> [accessed 22 August 2018].

how my research would impact my participants. I took care to protect those involved in my research, both before, during, and after their interviews. I consciously aimed at communicating with my interviewees about the project and their rights clearly and honestly. I also invested in listening and being open to participants' perspectives and sought transparency in communication of the research results.

I generally introduced myself and described the research project via email or SMS ahead of talking to potential interviewees by phone or in person. Before each interview, I gave participants an information sheet with basic information about myself, the University's contact details and those of the research project, along with a consent form. The consent form explained the University's policies further and gave the interviewees options regarding the interview procedures. They could, for example, decide whether or not to remain anonymous, though, in the event, none of my interviewees chose this option. Similarly, they were given the option of whether or not to give permission for the interview to be recorded or whether they agreed notes being taken. In addition, the form notified them about their right to stop the interview or withdraw their consent at any point, during, as well as after the interview. In several cases, an oral consent replaced a written one. This happened especially when busy politicians were impatient about signing yet another research form. Even then, I sought to communicate to them their rights and basic information about the research as clearly as I could.

I understood the price in time that my interviewees spent with me. I was particularly conscious of the fact that many researchers descended on Tunisia after 2011 to inquire into its "successful case". To lessen this burden, I always endeavoured to be as well-prepared for the interview as I could and refrained from asking for information that I could acquire by other means. When I found an intersection with



other researchers' interests, as I did on a few occasions, I tried to organize joint meetings when each of us could ask our questions of the interviewee.

I also took steps to protect myself. For example, before planning a research trip I evaluated the security situation in the country. It was for security concerns described above that I decided not to proceed with fieldwork in Egypt after 2015. Following terrorist attacks on tourists in the Bardo Museum in the capital Tunis and in Tunisia's sea resort in Sousse that took place in March and June 2015, the UK Foreign and Commonwealth Office issued a recommendation advising against all but essential travel to most areas of Tunisia, including the capital. This complicated my plans for fieldwork that was scheduled to begin in March 2016. The University of Warwick recommended that I cancel the trip altogether or reschedule. After careful assessment of the situation and discussions with other PhD students from international universities who were conducting research in Tunis, I left the UK in November 2016 for a two month visit to Tunis, instead of the six month stay I had originally planned. During my time there, I benefited from having already built a strong network of friends and colleagues during my previous research visits. Finally, I maintained regular contact with my supervisors and my partner. Although one can never prevent all possible complications while conducting fieldwork, be it in Europe or elsewhere, proceeding with caution, as I did, helps to minimize unnecessary risk.

### **3.7 Conclusion**

To recapitulate, in the first part of this chapter, I outlined the key concepts of this thesis and their operationalization. This involved defining democratization, i.e. the particular context in which constitutional change can happen and on which this thesis focuses. Political parties of the anti-authoritarian coalition, which I introduced next, are the

primary actors whose inclusion in constitution-making this thesis assesses. I then defined the outcome that is explored here, that is, the agreement on the constitution between those parties. The final element of the conceptual part of this chapter tackled the main explanatory factor: constitution-making design and inclusiveness. This made clear also what I mean by the origins of constitution-making design and the factors that affect it. The remaining sections of this chapter explained the methods that guide the research and selection of the cases. It also introduced the types of data used, methods employed when analysing them, and ethical considerations linked to their collection and usage. The empirical analysis that fills the following chapters builds on these definitions and considerations. Before inquiring into the role of constitution-making design in bringing about constitutional (dis)agreement in Egypt and Tunisia (Chapters 5-7), the next chapter (Chapter 4) sets the stage by introducing the transition processes, and the main political parties and their relationships.

## Democratic Transitions and Anti-authoritarian Coalitions

The Tunisian revolution, known in Tunisia itself as the Revolution for Dignity,<sup>57</sup> started at the end of 2010 and was the first in a series of popular upheavals that spread through, but were not limited to, the region of the Middle East and North Africa, which came to be known as the Arab uprisings. The sight of citizens protesting against their government in large numbers over an extended time period, and the sense of opportunity created by the fact that the country's president Zine El-Abidin Ben Ali subsequently escaped to Saudi Arabia after almost twenty-four years of authoritarian rule, inspired activists and protesters in Egypt, Libya, and Syria, among other places.

The demonstrations were triggered by the death of Tarak Bouazizi on 17 December 2010. Bouazizi was a 26 year old vegetable and fruit seller who set himself on fire in front of a police station in Sidi Bouzid, a small town in the country's interior. The different versions of his story, as recounted by various media outlets, generally describe the act, the motivation for which remain unknown, as a protest in response to police bullying, the poverty of the central regions and high unemployment.<sup>58</sup> Local activists, mainly trade unionists, immediately took up the opportunity presented to them and framed the story as political, by linking it to wider socio-economic

---

<sup>57</sup> See Hmed (2016, p. 81).

<sup>58</sup> See e.g. The Observers, "Public suicide attempt sparks angry riots in central Tunisia", France 24, 21 December 2012, available at: <http://observers.france24.com/en/20101221-youth-public-suicide-attempt-sparks-angry-riots-sidi-bouzid-tunisia-poverty-bouazizi-immolation> [accessed 3 September 2018]; and Ryan, Y., "The tragic life of a street vendor", Al-Jazeera, 20 January 2011, available at: <https://www.aljazeera.com/indepth/features/2011/01/201111684242518839.html> [accessed 3 September 2018].

grievances, and made sure that it became widely known (Chouikha and Gobe, 2015, pp. 75-7; ICG, 2011, pp. 3-5).

In the days following the incident, protests spread from Sidi Bouzid to neighbouring towns before making its way to the larger coastal cities, reinforced by police brutality and further deaths.<sup>59</sup> New actors joined in, notably lawyers, students, journalists, and members of both former legal and illegal political opposition groups. On 11 January 2011, the national leadership of the country's major labour union, UGTT, weighed in, expressing its solidarity with the protests and announcing a general strike for 14 January (ICG, 2011, pp. 4-6; Chouikha and Gobe, 2015, pp. 76-8; Dot-Pouillard, 2013, pp. 30-1). During the twenty-eight days of the revolt, the slogans chanted by protesters shifted from those centred on employment to ones also expressing opposition to the ruling regime. On the morning of 14 January, the day President Ben Ali fled the country, the famous catchphrases of the revolution, "The people want the fall of the regime!" and "Dégage!"<sup>60</sup> echoed through Habib Bourguiba Avenue, the capital's major boulevard (Baraket and Belhassine, 2016, pp. 11-2, 81-5).<sup>61</sup> The context in which the revolt started is mirrored in the motivations of those who took to the streets. Economic grievances and disappointment with the high levels

---

<sup>59</sup> The Tunisian revolution was not a peaceful event. The initial UN estimates from 2011 indicated that at least 300 people were killed between the start of the protests, on 17 December 2010, and the flight of Ben Ali, on 14 January 2011. More than 700 people were injured. See CNN Wire Staff, "About three hundred people killed in original Tunisian uprising, U.N. report", CNN, 21 May 2011, available at: <http://edition.cnn.com/2011/WORLD/africa/05/21/tunisia.un/> [accessed 3 September 2018].

<sup>60</sup> "Dégage!" translates from French as "Out!" or "Go!".

<sup>61</sup> Kirkpatrick, D.D., "Tunisia leader flees and prime minister claims power", New York Times, 14 January 2011, available at: <https://www.nytimes.com/2011/01/15/world/africa/15tunis.html?pagewanted=1> [accessed 3 September 2018].

of corruption featured most often among reasons cited by those surveyed about their participation in protests, followed by demands for civil and political freedoms (Beissinger et al., 2015, p. 4).<sup>62</sup>

The revolutionary tide that originated in Tunisia soon reached Egypt. On 25 January 2011, ten days after Ben Ali flew to Saudi Arabia, protesters gathered at Tahrir Square in downtown Cairo, while smaller demonstrations were held in other parts of the city and around the country. Protesters managed to reclaim the famous square in the days following, despite the repressive tactics adopted by police, and launched an 18 day sit-in. The slogan, “bread, freedom and social justice” soon evolved into a resolute call for the overthrow of the regime. Accompanied by civilian resistance outside Tahrir, the revolution eventually yielded its first tangible result. On the eve of 11 February, Hosni Mubarak’s vice president announced on state television that the president had decided to leave office after 30 years of rule, and that he had instructed the Supreme Council of the Armed Forces (SCAF) to take over the running of the country.<sup>63</sup> As with Tunisian revolutionaries, Egyptians who had joined the protests were surveyed and indicated that their primary motivations were dissatisfaction with their economic situation and the ever present, high levels of corruption. However, they were also disenchanted with the presidential succession of Mubarak’s son, Gamal, and demanded civil and political freedoms (Beissinger et al., 2015, p. 4).

---

<sup>62</sup> According to Beissinger et al. (2015, p. 4), 77 % of revolutionaries surveyed identified improving their economic situation as their primary or secondary motivation for joining the protests. 60% of them indicated combating corruption as the primary or secondary reason, and 50% cited demands for political and civil freedoms.

<sup>63</sup> For more detail on the 18 days of the uprising, see e.g. El Ghobashy (2011), Shehata (2011), and Shokr (2011).

The two uprisings paved the way for constitutional reforms which could inaugurate some of these demands, especially by putting in place guarantees for democratic institutions, as well as rights and freedoms, giving Egyptians and Tunisians tools to choose and control their government. The main focus of this thesis is in exploring the designs of the processes through which the constitutions were changed, and their impact on the constitutional (dis)agreement among the major political parties of the anti-authoritarian coalitions. As Chapter 5 will demonstrate, while in Tunisia political parties widely embraced the constitution, disagreement surrounded the adoption of the charter in Egypt. Before probing these diverging outcomes and the role of the inclusive constitution-making design in bringing them about, this chapter sets the scene by introducing the empirical cases.

First, this chapter provides an outline of the transition processes in the two countries and evaluates whether democratic transitions were completed. The opening of the political environment following the uprisings created an influx of new political parties, some of which accompanied the traditional opposition forces in the writing of the constitution. The second part of this chapter therefore identifies and introduces the key forces whose involvement in constitution-making and agreement on the constitution this thesis investigates, the major parties of the anti-Ben Ali and anti-Mubarak coalitions. In doing so, the chapter also explores the type and nature of the divisions that set these parties apart. I conclude that in both cases, anti-authoritarian coalitions were divided most notably along religious lines. The reasons for the deep divisions between the two camps were threefold. The first was the conflicting nature of their ideological visions and the second lies in the fact that authoritarian rulers had sown the seeds of mistrust between them. This mistrust was only increased by the growing popularity among the public of Islamist leaning parties. This chapter provides

evidence for the successful completion of democratic transition in both cases, but argues that Egyptians faced more impediments on their way to the minimum democratic threshold set in this thesis. Timelines of key events relevant to both cases are available in Appendix I and II.

#### **4.1 Democratic Transitions in Tunisia and Egypt**

The popular uprisings in Egypt and Tunisia unseated long-standing dictators, Ben Ali in Tunisia and Mubarak in Egypt, triggering democratic change. Completing democratic transitions, however, proved to be difficult as there was resistance from forces and institutions which did not, as the two presidents did, disappear overnight. In Chapter 3, I introduced the criteria which would guide the assessment of the extent to which transition was completed. Drawing on the procedural and minimalist, unextended, understanding of democracy, I have argued, in agreement with Bratton and Van de Walle (1997, p. 194), that a democratic transition “can be said to have occurred when a regime is installed on the basis of a competitive election, freely and fairly conducted within the matrix of civil liberties, with results accepted by all participants”. I also rely on a definition by Linz and Stepan (1996, p. 3) which divides the completion of a transition into four steps: (1) “sufficient agreement” about “political procedures to produce an elected government”; (2) the government has to come to power as “the direct result of free and popular vote”; and (3) have “*de facto* authority to generate new policies”. The authors add a fourth condition, which, in contrast to this thesis, draws on the extended democracy minimum definition. As such, it is not relevant in the context of this present research. This condition implies that “the executive, legislative and judicial power” does not have to “share power with other bodies *de jure*” (1996, p. 3).

The analysis below suggests that in Tunisia, relentless demonstrations eventually earned the protestors democratic elections for the National Constituent Assembly, which certified the close of the transition to democracy. In Egypt, unceasing popular unrest was also key to the continuation of democratic reforms. However, even though I maintain that the country passed the threshold for the completion of the transition, authoritarian institutions in Egypt and, above all, the military's grip on political power proved difficult to dislodge, creating obstacles to democratization in general, and constitutional change in particular.

4.1.1 Tunisia: From Kasbah Square to Electing the National Constituent Assembly

Ben Ali's regime, and its legitimacy, was shaken by the 28 days of protests at the end of 2010 and the beginning of 2011. Although the president himself was removed, he left behind some of the core institutional vehicles of his authoritarian rule. The two chambers of the national parliament and the RCD, the Democratic Constitutional Rally, known by its French acronym, remained intact. In the wake of Ben Ali's departure, Fouad Mebazza, who had been the president of the lower chamber of parliament between 1997 and 2010, was appointed as an interim president of the country.<sup>64</sup> The newly formed government of "National Unity" initially comprised some personalities of the former legal opposition parties and representatives of the UGTT. However, the heads of key ministries, such as the Ministry of the Interior, continued to be filled by RCD figures and the government itself was headed by the last of Ben Ali's prime ministers, Mohamed Ghannouchi (ICG, 2011, pp. 15-6;

---

<sup>64</sup> For details on constitutional procedure, see Ben Achour and Ben Achour (2012, pp. 717-19).



Chouikha and Gobe, 2015, pp. 81-2; Gobe, 2012, pp. 2-3).<sup>65</sup> Wolf (2017a, p. 14) also points out, based on her interview with the then Prime Minister Ghannouchi, that Ben Ali, who left for Saudi Arabia in the wake of the protests, never actually intended to leave the country for good.

The personnel and institutional continuity of Ben Ali's regime was ended only after new protests broke out in front of the government's seat in the capital's Kasbah Square during late January and February 2011. Protesters demanded the resignation of Ghannouchi's government, the dissolution of the RCD, and elections to a constituent assembly (Gobe, 2012, p. 3). The combination of the additional pressure of UGTT and other civil society organizations, as well as protests in the regions (Hmed, 2016, pp. 77-8), forced Ghannouchi's resignation as prime minister on 27 February. Beji Caid Essebsi, a politician linked to the previous president, Habib Bourguiba, rather than to Ben Ali, then took Ghannouchi's place. The interim leaders announced that the elections to the National Constituent Assembly would take place in July 2011, although later postponed it to 23 October of the same year, and took steps to dissolve the parliament and suspend the 1959 Constitution. They also committed, along with the rest of the government, not to run for seats in the forthcoming elections (Chouikha and Gobe, 2015, p. 83; ICG, 2011, p. 18). On 9 March, the RCD was formally dissolved by court order (Wolf, 2017a, p. 15), and its members subsequently banned from participation in politics for a 10-year period (Brownlee et al., 2015, p. 131).

---

<sup>65</sup> Please note that Prime Minister Mohamed Ghannouchi and Ennahda's leader, Rachid Ghannouchi, are not related. It is also important to note that after being confronted with discontent, the government was reshuffled to reduce the number of RCD figures, though Ghannouchi remained at its head. See e.g. ICG (2011, p. 16).

Between March 2011 and the NCA election in October, a body composed of political parties and civil society representatives was appointed with the remit of preparing the necessary reforms ahead of the elections. The Higher Authority for the Realization of the Objectives of the Revolution, Political Reform and Democratic Transition, hereafter referred to simply as the Higher Authority, came about as a compromise between Essebsi's government and opposition groups.<sup>66</sup> At its height, the HA included 155 nominated members coming from a variety of social and political groups.<sup>67</sup> The body drafted electoral law for electing the NCA and formed the Higher Authority for Elections, known by its French acronym ISIE, an independent commission tasked with supervising the NCA vote. Even though the HA was not formally granted legislative powers, it did initiate the adoption of laws during the interim period. Those were simply passed to the interim president for approval and adoption in the form of decrees and, according to one of its members, the president generally "didn't change anything of what we proposed".<sup>68</sup>

The elections to the NCA, which was to serve the dual role of legislature and constitution-drafting assembly, progressed in October 2011, nine months after Ben Ali fled the country. The polls reflected the diversity of the political spectrum; 1512

---

<sup>66</sup> The HA comprised of opposition political parties, civil society organizations, national personalities, including young activists and family members of the revolution's victims, commonly named the martyrs, representatives of regions, different occupations, academics and even those of the French diaspora (ICG, 2011, p. 19). Author Interview with Mouldi Riahi, member of Ettakatol and at the time the National Council for the Protection of the Revolution (and later on a member of the HA). Tunis, 8 October 2015.

<sup>67</sup> For a full list of the HA members, see Leaders, "La liste complète des membres du Conseil de Haute Instance pour la réalisation de la révolution", 7 April 2011, available at: <http://www.leaders.com.tn/article/4773-la-liste-complete-des-membres-du-conseil-de-la-haute-instance-pour-la-realisation-des-objectifs-de-la-revolution> [accessed 3 September 2018].

<sup>68</sup> Author Interview with Mouldi Riahi, Ettakatol's representative in the HA. Tunis, 8 October 2015.

electoral lists were presented to voters.<sup>69</sup> The elections had a clear winner with the Islamist Ennahda Party winning 41 % of the total number of NCA seats. The rest of the seats were distributed between smaller groups. Four of them filled more than 15 seats in the 217-member Assembly. Apart from one newcomer, the Islamist Aridha Chaabia (Popular Petition) Party which received 12 % of seats, these were three long-standing opposition parties: Congress for Republic, known under the French acronym CPR, which gained 13.4 % of seats, Ettakatol, also known as the Forum Démocratique pour le Travail et les Libertés but usually referred to by its Arabic name, gained 9.2 % of seats, and the Progressive Democratic Party (PDP) obtained 7.4 % of the seats (see Table 1). The ensuing negotiations resulted in the governing Troika coalition composed of three parties, Ennahda, the CPR, and Ettakatol, which together had a comfortable majority with 138 seats of the 217. These parties then distributed the key posts among themselves. The CPR's leader, Moncef Marzouki, was elected president, Ennahda's Hamadi Jebali became prime minister, and Mustafa Ben Jaafar from Ettakatol became President of the NCA (Brownlee et al., 2015, p. 139).

The NCA ballots, which were judged by observers as free, fair and democratic,<sup>70</sup> along with the appointment of the government that stemmed from them, signalled the completion of the democratic transition. They also unleashed the constitution-making process, which I discuss in Chapters 5 and 6. The next section examines the development of democratic transition in Egypt.

---

<sup>69</sup> Slightly more than half of them were put forward by political parties. See Carter Center (2011, p. 32).

<sup>70</sup> See Freedom House, "Freedom in the world 2012: Tunisia", available at: <https://freedomhouse.org/report/freedom-world/2012/tunisia> [accessed 30 August 2018].

Political party/ Electoral coalition	Seats		Votes %
	Number	%	
Ennahda	89	41	37
CPR	29	13.4	8.7
Aridha Chaabia	26	12	6.7
Ettakatol	20	9.2	7
PDP	16	7.4	3.9
Al-Moubadara	5	2.3	3.2
Democratic Modernist Pole	5	2.3	2.8
Afek Tounes	4	1.8	1.9
PCOT	3	1.4	1.6
Peoples' Movement	2	0.9	0.7
Movement of Socialist Democrats	2	0.9	0.6
Free Patriotic Union	1	0.5	1.3
WATAD	1	0.5	0.8
Maghrebine Liberal Party	1	0.5	0.5
New Destourian Party	1	0.5	0.4
Social Democratic Nation Party	1	0.5	0.4
Justice and Equality Party	1	0.5	0.2
Social Struggle Party	1	0.5	0.2
Party of the Cultural Unionist Nation	1	0.5	0.1
8 independent lists	8	3.7	1.5
<b>Total</b>	<b>217</b>		

**Table 1. Results of the 2011 NCA elections in Tunisia**

*Source:* Brownlee et al. (2015, p. 138).

#### 4.1.2 Difficult Transition in Egypt

As in Tunisia, the progress of democratic change remained uncertain in Egypt even as President Mubarak resigned following the 25 January Revolution. Although the president was gone, it was the generals from the SCAF who assumed legislative and executive prerogatives in the aftermath. The military has been widely considered as the backbone of the outgoing regime.<sup>71</sup> The ensuing period was marred by restrictions

---

<sup>71</sup> The military assisted Mubarak in cracking down on dissent on several occasions: after the assassination of his predecessor, Anwar Sadat; during the 1986 bread riots; and during the repression of Islamists in the 1990's (Droz-Vincent, 2007, p. 198). All of Egypt's post-independence presidents, with the exception of Mohamed Morsi, were drawn from the ranks of the military. Under Mubarak,

on civil and political freedoms and violent suppression of protesters calling for the end of military rule (Pratt, 2015).<sup>72</sup> The number of civilians tried before military tribunals had surpassed the total for the whole of the Mubarak era in just seven months after the protests began in January 2011.<sup>73</sup>

With Mubarak ousted in February 2011, the SCAF moved to dissolve the acting parliament, suspend the 1971 Constitution and appoint a small committee of legal experts charged with the task of preparing changes to its text.<sup>74</sup> The SCAF then announced that voters would decide on the implementation of the hastily drafted amendments in a popular referendum in March 2011. While being supported by Islamist parties, as well as by 77.2 % of voters who approved the changes on 19 March

---

military men were not uncommon among local governors and became influential players in the business sector, manufacturing a variety of goods not linked to military-related production (Marshall and Stacher, 2012; Abul-Magd, 2018).

<sup>72</sup> Perhaps most indicative of the extent of the repressions under the SCAF are two specific events. On 9 October 2011, over 20 protesters, primarily from the Egyptian Coptic community, were killed and more than 200 injured in clashes with security forces near the television station building at Maspero Square in Cairo. Over a month later, in November, security forces brutally crushed an anti-military protest at Mohamed Mahmoud Street near Tahrir Square. See Shenker, J., “Egypt protests: New street battles erupt in Tahrir Square”, The Guardian, 21 November 2012, available at:

<https://www.theguardian.com/world/2011/nov/21/egypt-protests-erupt-tahrir-square> [accessed 3 September 2018].

<sup>73</sup> Human Rights Watch, “Egypt: Retry or free 12,000 after unfair military trials”, 10 September 2011, available at: <http://www.hrw.org/news/2011/09/10/egypt-retry-or-free-12000-after-unfair-military-trials> [accessed 3 September 2018].

<sup>74</sup> See CNN Wire Staff, “Egypt’s military dissolves parliament, suspends constitution”, CNN, 13 February 2011, available at: <http://edition.cnn.com/2011/WORLD/meast/02/13/egypt.revolution/> [accessed 3 September 2018]. For the work of the expert committee, see Kirkpatrick, D. and K. Fahim, “In Egypt, a panel of jurists is given the task of revising the country’s constitution”, New York Times, 15 February 2011, available at: [http://www.nytimes.com/2011/02/16/world/middleeast/16egypt.html?pagewanted=2&\\_r=5&hp](http://www.nytimes.com/2011/02/16/world/middleeast/16egypt.html?pagewanted=2&_r=5&hp) [accessed 3 September 2018].

2011, they faced objections from non-Islamist parties.<sup>75</sup> Fearing that the vote would only serve to legitimize the military's grip on power and that it would give an advantage to the more organized Islamists, as the amendments presupposed swift legislative elections, non-Islamists refused to accept the outcome of the referendum.<sup>76</sup> The SCAF ultimately decided not to abide by the result of the referendum under pressure from critics. Instead, it released another document intended to function as an interim constitution, incorporating some of the articles accepted in the referendum, as well as adding new ones. The Constitutional Declaration of 30 March 2011 provided a detailed vision of the political system. It envisaged elections to two chambers of parliament, followed by presidential polls. The document prepared the ground for more thorough constitutional reform, and outlined the constitution-making process. Deputies of the incoming bicameral parliament were to elect a 100-member provisional assembly that would be responsible for drafting the new constitution. Voters would then approve the text in a referendum. The declaration also strengthened the SCAF's role during the interim period. Article 61 assigned the generals executive and legislative duties, including the responsibility of appointing the head of the government and ministers until elections were held.<sup>77</sup>

---

<sup>75</sup> MacFarquhar, N., "Egyptian voters approve constitutional change", New York Times, 20 March 2011, available at:

<http://www.nytimes.com/2011/03/21/world/middleeast/21egypt.html?pagewanted=all> [accessed 3 September 2018].

<sup>76</sup> Ezzat, D., "Egyptian Islamists, along with NDP, campaign hard for a 'yes' vote on constitutional amendments," Ahram Online, 17 March 2011, available at:

<http://english.ahram.org.eg/NewsContent/1/0/7971/Egypt/0/Egyptian-Islamists,-along-with-NDP,-campaign-hard-.aspx> [accessed 3 September 2018].

<sup>77</sup> See the Constitutional Declaration of 30 March 2011, and especially Articles 60 and 61. ConstitutionNet, "The 2011 Constitutional Declaration", International IDEA, available at:

The first democratic elections to the bicameral parliament unfolded in three rounds with additional run-offs between 28 November 2011 and 11 January 2012, and saw Islamists outperforming all other political forces (see Table 2). The major Islamist party, the Freedom and Justice Party of the Muslim Brotherhood, obtained 45 %, and the conservative Salafi Nour (Light) Party, with its allies, won 24.7 % of the seats in the People's Assembly (PA), the lower chamber of the parliament. Combined, the Islamist parties secured over 70 % of seats,<sup>78</sup> and their majority was even greater in the upper chamber, the Consultative Council. The limited gains achieved by non-Islamists were dispersed across nearly 10 political parties. Of these, the traditionally conservative Wafd Party, or New Delegation Party, in this thesis referred to without the “new”, attracted most voters and garnered 7.6 % of seats in the PA. The Egyptian Social Democratic Party (ESDP), with 3.2 %, and the Free Egyptians Party (FEP) supported by Coptic Christians, with 3 % of seats, followed. The poor showing by revolutionaries reflected the focus of pro-democracy activists on street protests as the major arena for their resistance against the former regime and the SCAF, rather than parliamentary politics.<sup>79</sup> Their Revolution Continues Coalition, consequently, received only 1.4 % of the total number of seats in the PA.

---

[http://www.constitutionnet.org/sites/default/files/march\\_2011-egypt\\_interim\\_constitution-english.pdf](http://www.constitutionnet.org/sites/default/files/march_2011-egypt_interim_constitution-english.pdf) [accessed 21 August 2018].

<sup>78</sup> The figure provides the total number of seats held by the FJP, the electoral coalition lead by the Nour Party, the Islamist Alliance, the Wasat Party, and the Islamic Labour Party.

<sup>79</sup> For a good elaboration, see Sallam, H., “Elections in the midst of revolution.” 28 November 2011, Jadaliyya, available at: <http://www.jadaliyya.com/Details/24717/Elections-in-the-Midst-of-Revolution> [accessed 21 August 2018].

Electoral coalition	Political party	Seats		Votes %*
		Number	%	
<b>Democratic Alliance</b>		235	47,2	37,3
	FJP	224	45	
	Karama Party	6	1,2	
	Ghad Al-Thawra	2	0,4	
	Civilization Party	2	0,4	
	Islamic Labour Party	1	0,2	
<b>Islamist Alliance</b>		123	24,7	27,7
	Nour Party	107	21,5	
	Building and Development Party	13	2,6	
	Asala (Authenticity) Party	3	0,6	
<b>Egyptian Bloc</b>		34	6,8	8,9
	ESDP	16	3,2	
	FEP	15	3	
	Tagammu	3	0,6	
<b>Revolution Continues Coalition</b>		7	1,4	2,8
Non-aligned parties				
	Wafd Party	38	7,6	9,2
	Wasat Party	10	2	3,7
	Reform and Development Party	9	1,8	2,2
	Egyptian Arab Union	1	0,2	0,6
	Adl (Justice) Party	1	0,2	0,7
NDP offshoots				
	National Party of Egypt	5	1	1,6
	Freedom Party	4	0,8	1,9
	Egyptian Citizen Party	4	0,8	0,9
	Union Party	2	0,4	0,5
	Democratic Peace Party	1	0,2	0,9
	Conservatives Party	1	0,2	1,1
Independents		23	4,6	
<b>Total</b>		<b>498</b>	<b>100</b>	<b>100</b>

**Table 2. Results of the 2011/2012 PA election in Egypt**

*Source:* Hassan (2013, p. 373).

\* Results from votes casted for candidates running under the PR system only.

The election was a victory for the parties of the anti-Mubarak coalition at the expense of those linked to the former regime. However, the dissolution of the outgoing National Democratic Party (NDP) did not prevent its followers from regrouping and



six such entities participated in the 2011/12 polls.<sup>80</sup> Together these offshoots of the NDP won as few as 3.4 % of seats. Yet despite the electoral success of Mubarak's opponents, parliament found itself stripped of the power to form a new government. Under the Constitutional Declaration of 30 March 2011, these functions were retained by the SCAF, which was unwilling to surrender them. In November 2011, just before the legislative elections took place, the generals appointed a new prime minister, Kamal Ganzouri, who had served as prime minister under Mubarak in the 1990s.<sup>81</sup>

Egyptians went to the polling stations again a few months later, on 23 and 24 May 2012, this time to elect a president. Presidential candidates from the former regime performed better on this occasion. The second round resulted in a close contest between Mubarak's former prime minister, Ahmed Shafiq, and the FJP's candidate, Mohamed Morsi. Although Morsi eventually won on 24 June, it was a tight margin of victory. He bettered Shafiq's share by just 1.7 %, winning 51.7 % of votes in the run-off (Carter Center, 2012, p. 5). Crucially, for our assessment of transition completion, observers have judged that the polls in which voters elected the executive were "generally consistent with international standards" for democratic elections.<sup>82</sup>

---

<sup>80</sup> The Supreme Administrative Court ruled to dissolve the NDP and nationalize its assets in April 2011. See Bradley, M., "Egypt's Former Ruling Party Dissolved – But Not Defunct," *The Wall Street Journal*, 18 April 2011, available at: <https://www.wsj.com/articles/SB10001424052748703702004576269172473506278> [accessed 3 September 2018].

<sup>81</sup> CNN Wire Staff, "Would-be prime minister no stranger to Egyptian Government", CNN, 25 November 2011, available at: <http://edition.cnn.com/2011/11/24/world/meast/egypt-ganzouri-profile/index.html> [accessed 3 September 2018].

<sup>82</sup> They have, nevertheless, criticized the excessive powers of the Presidential Election Commission, the restrictions placed on election observers, and other minor procedural irregularities. See Freedom House, "Freedom in the world 2013: Egypt", available at: <https://freedomhouse.org/report/freedom-world/2013/egypt> [accessed 22 July 2016].

Only a few weeks after announcing the results of the presidential election, SCAF ordered the dissolution of the PA following a controversial ruling by the Supreme Constitutional Court, SCC, that deemed the electoral system used for the legislative polls were unconstitutional.<sup>83</sup> While this was not the first time the court had ruled against electoral law, and had done so under Mubarak based on similar arguments, the ruling had never been enforced so quickly, interrupting, as it did, the lower chamber's term just five months after its election.<sup>84</sup> The event marked the beginning of an open confrontation between the FJP and SCAF and the judiciary which impacted on the constitution-making process.<sup>85</sup>

In August 2012, President Morsi appointed a new cabinet, and instigated the retirement of serving Minister of Defence, Mohamed Hussein Tantawi, and army Chief of Staff, Sami Hafez Anan, although he replaced them with other generals from SCAF. He also cancelled the provision adopted by SCAF in June 2012 which gave its members legislative powers following the dissolution of the PA. The event marked

---

<sup>83</sup> Egypt Independent, "People's Assembly receives dissolution order from SCAF," 15 June 2012, available at: <http://www.egyptindependent.com/peoples-assembly-receives-dissolution-order-scaf/> [accessed 3 September 2018].

<sup>84</sup> The court argued that the electoral law was unconstitutional because it also allowed political parties to field candidates for the one-third of parliamentary seats reserved for independent candidates. This was deemed discriminatory and, hence, against the constitution. See Egypt Independent, "People's Assembly receives dissolution order from SCAF," 15 June 2012. Prior to the revolution, the PA was dissolved on two occasions. In 1986, Mubarak disbanded the PA two years after its election as he anticipated a similar ruling to that produced by the SCC in 2012. The manipulation of the electoral system ahead of the next elections did not diminish the argument about the unconstitutionality of the electoral law, and the SCC eventually declared the elections "null and void". However, it did so only in 1990, three years after the elections had taken place in 1987 (see Kassem, 2004, pp. 60-1). The SCC's move to dissolve the PA five months after its inauguration in 2012 was, therefore, unprecedented.

<sup>85</sup> For a more detailed account of the role of the SCC in the transition and its relationship to the FJP, see Brown (2013a).

the completion of the transition to democracy as defined above. However, the lower chamber was not reinstated and efforts to do so were immediately blocked by the courts. Morsi consequently assumed the privileges and responsibilities of the PA himself, becoming both executive and legislature (Brownlee et al., 2015, pp. 120-1).<sup>86</sup>

## **4.2 Anti-authoritarian Coalitions in Tunisia and Egypt**

This section identifies the major political parties of the anti-authoritarian coalition in Tunisia and Egypt, and explores the nature of the political divisions that set these groups apart. In Chapter 3, I defined the anti-authoritarian coalition as encompassing not only political parties who were excluded from the government under the previous regime but also newly founded parties established during the transition period. The criterion for considering these new parties as members of the anti-authoritarian coalition is that they had not been directly related to any of the former ruling parties. If any of those from the top echelons of these parties had been recruited from among former regime figures, or if the parties openly declared that they saw themselves as following in the path of the ruling party, the RCD in Tunisia and the NDP in Egypt respectively, they would not be categorized as forces of the anti-authoritarian coalition. The extraordinary growth of new political forces following the two revolutions makes it necessary to limit the analysis to political parties that were significantly involved in the constitution-making processes. Consequently, I concentrate on entities that were “identified by an official label” and which ran in elections and won seats (Sartori, 1976, p. 63). I designated as marginal those whose seat share, or contribution to the debate about the constitution, was minimal.

---

<sup>86</sup> For an alternative view of democratization in Egypt, see Pratt (2015).

#### 4.2.1 Anti-Ben Ali Coalition in Tunisia

In Tunisia, the most important political cleavage that shaped the work on the constitution set apart “conservative” and “progressivist” political forces.<sup>87</sup> The divide goes back to the historical antagonism between secularist leftist and Islamists activists, who found themselves pitted against one another by ideological differences, competition for the support of similar social constituencies, and the divide and rule tactic employed by Ben Ali’s regime. Under Ben Ali, state-sponsored secularism and the promotion of fear of Islamism became instruments of opposition co-optation. This policy ensured that many left leaning parties and civil society organizations, such as women’s rights movements, were “equally afraid” of Ennahda “for the policies it might implement if in power” as they were of the regime itself (Haugbølle and Cavatorta, 2011, p. 333; see also Wolf, 2014, p. 4). Nevertheless, episodes of cooperation between Ennahda and several parties of the centre-left in the second half of the 2000s helped to smooth the edges of the divide before the revolution began (Marzouki, 2017, p. 344, pp. 351-2; Choikha and Gobe, 2015, p. 70; Haugbølle and Cavatorta, 2011, p. 337). Hama Hammami, a left-wing figure, commented on efforts at cross-ideological cooperation, stating, “Before the revolution, the political power sought to exploit the ideological fights between left, liberals and Islamists, and we realized it.”<sup>88</sup> Some of this cooperation continued in the NCA, as two parties, Ettakatol and CPR, entered into a governing Troika coalition with Ennahda, even though they cannot be characterized as Islamist parties.

---

<sup>87</sup> These are the terms in which NCA deputies from the “progressivist” camp referred to themselves and their opponents. Author Interview with Lobna Jeribi, 23 November 2016, Tunis.

<sup>88</sup> Author Interview, 14 December 2016, Tunis.

Overall, however, the electoral politics triggered by the revolution accentuated the religious cleavage once again, and it was fully restored by the time the NCA came into being in October 2011. During the work on the constitution, it manifested itself in the divisions between those who supported a more conservative social project in which religion had an important place, and political forces on the left and centre-right of the political spectrum. The second group coalesced around their support for a constitutional order based on a division between religion and the state, strong guarantees for human rights, and equality between men and women, as explored in Chapter 5. Apart from these ideological differences, proponents of the two groups often laboured under prejudices and mistrust. Opponents feared, for example, that Ennahda had a “hidden” agenda. A member of a secularist party, Nidaa Tounes, told me: “Ennahda was a foreign party. Their leaders did not have a Tunisian accent. Their dream was not a Tunisian dream, not a Tunisian nation. It is the Islamic umma. They were a totalitarian party.”<sup>89</sup> The lack of trust was also acknowledged as one of the major challenges for the constitution-making process by Ennahda’s leading members.<sup>90</sup>

Another major dividing line that marked inter-party relations at the NCA was between the government of the Troika and the opposition. This divide crossed the Islamist and secularist camps, as the Troika coalition incorporated Islamist Ennahda, on the one hand, and parties that cannot be labelled simply as Islamist, the CPR and Ettakatol, on the other. I dive deeper into these issues when I introduce the individual

---

<sup>89</sup> Author Interview with Mahmoud Ben Romdhane, member of Nidaa Tounes and former director of a branch of Amnesty International Tunisia, who used to defend victims of regime repression including members of Ennahda. Tunis, 8 December 2016.

<sup>90</sup> Author Interviews with Mehrezia Labidi, Ennahda deputy who served as NCA Vice-President (10 July 2014, Tunis), and Zied Ladhari, Ennahda’s Spokesperson (9 July 2014, Tunis).

political parties and their relationships. To do so however, I first need to explain how I assessed which parties could be classified as major members of the anti-Ben Ali coalition.

Assessing the roles of the major political actors within the anti-authoritarian coalition in Tunisia and their influence was complicated by the weakly institutionalized party system, which was characterized by the parties' "weak organizational structure, vague ideological profiles, and strong focus on personal leadership" (Sartori, 1976, pp. 217-26). In particular, the NCA was characterized by frequent crossing of the floor by members. Soon after its formation, deputies began changing their political affiliation, which resulted in the creation of new parties, the disappearance of existing ones, and a growth in the number of independent and unaffiliated members. The extent of these developments was such that during the first year of the NCA's existence alone, 47 out of 217 deputies switched their party allegiance (Perez, 2016, p. 232). This phenomenon affected almost all the parties that had performed well in the 2011 elections, with the single exception of Ennahda. During the NCA's term, the political landscape was in consequence significantly redrawn (see Table 3 below).

The influence that different political parties could exert on constitutional negotiations changed as time went by. The nomadism experienced by so many parties was both a root cause and an indication of the power shift away from the government to the opposition between the October 2011 elections and the January 2014 vote on the constitution. In the 2011 ballots, Ennahda won 89 seats in the 217-member NCA. The next election to the Assembly of People's Representatives that took place in October 2014 saw Ennahda's representation falling to 69 seats and its former coalition

partner, the CPR, to 4.<sup>91</sup> Finally, navigating the political maelstrom was made difficult by the NCA's internal organization, which gave more importance to parliamentary blocs than to individual parties.

Parliamentary bloc (individual parties are in italic)	Seats in NCA (as to February 2012)		Seats in NCA (as to December 2013)	
	Number	%	Number	%
<i>Ennahda</i>	89	41	89	41
Democratic Bloc	30	13.8	35	16
<i>CPR</i>	29	13.4	15	6.9
<i>Ettakatol</i>	22	9.2	13	6
Freedom and democracy	13	5.9	-	-
Freedom and dignity	12	5.5	12	5.5
<i>Aridha Chaabia</i>	26	12	-	-
<i>Wafa Movement</i>	-	-	9	4.1
Independents	-	-	10	4.6
No bloc	11	5	34	15
<b>Total</b>	<b>217</b>		<b>217</b>	

**Table 3. Tunisian parliamentary blocs in February 2012 (as initially composed) and in December 2013**

*Source:* Carter Center (2014, p. 47-8); Weslaty (2012).

To determine the strength of different political forces and, therefore, to identify the major members of the anti-Ben Ali coalition, I rely on a number of pieces of information: I take into account the support each party won in the October 2011 elections to the NCA and the number of seats they were subsequently allocated in the Assembly (Table 1); the number of seats they held a month before the adoption of the constitution, in December 2013; and opinion polls from October 2013. In some cases, in addition, I consider the results of the next legislative elections from October 2014. Where it is relevant, I utilize figures for the parliamentary blocs rather than for

---

<sup>91</sup> For results of the 2014 parliamentary elections, see Election Guide, "Tunisian Republic, Election for Majlis nawaab ash-aa'b, Tunisian Assembly of People's Representatives", IFES, 26 October 2014, available at: <http://www.electionguide.org/elections/id/2746/> [accessed 3 September 2018].

individual parties. I distinguish between several groups of political parties based on each party's relationship with the governing coalition, and their Islamist or secularist leaning: Ennahda, non-Islamist parties of the government coalition, and non-Islamist parties in the opposition. I introduce Nidaa Tounes, an increasingly influential secularist force that was not included in the anti-Ben Ali coalition due to the presence of former regime figures in its ranks, and Aridha Chaabia, a conservative Islamist party that turned out to be a marginal player in the constitutional debates.

### *Ennahda*

The support of 37 % voters in the 2011 ballots gave the moderate Islamist Ennahda 89 seats in the NCA, making it by far the strongest political force after the revolution. The party developed gradually from a religious activist group, the Islamic Group (Al-Jama'a Al-Islamiyya) that emerged in the late 1960s. The group was focused on reviving Islam through preaching and education in a society marked by secularist reforms of the first post-independence president, Habib Bourguiba. In 1979, its members, who over time grew willing to become involved in political debates in addition to social activities, adopted a more organized internal structure (Wolf 2017b, pp. 31-6, pp. 50-1). Both Bourguiba and his successor Ben Ali sought to curb the influence of the increasingly popular movement, renamed Harakat Ennahda (Renaissance Movement) in 1988. It was, consequently, never allowed to function legally as a political party. Nevertheless, independent candidates backed by Ennahda participated in the 1989 polls and attracted 14.5 % of the vote,<sup>92</sup> a spectacular result that established Ennahda as the strongest opposition force against the ruling RCD.

---

<sup>92</sup> In some urban constituencies, the figure went as high as 30 % (Wolf, 2017b, p. 71).



However, its success also frightened its secularist opponents and prompted a harsh response from the regime. Following the subsequent crackdown at the beginning of the 1990s, Ennahda's official structures almost completely disappeared as many of its activists and their families faced prison sentences and torture, the organization went underground amid increased political restrictions, and others left for exile in Europe (Chouikha and Gobe, 2015, p. 51).

For most Tunisians, political Islam, as represented by Ennahda, became visible only after the ousting of Ben Ali, when its leader Rachid Ghannouchi returned to Tunis from exile in the United Kingdom.<sup>93</sup> With re-established institutionalized channels of internal democracy, a stable membership base bound closely together by years of repression, and a regional presence across Tunisia re-activated through its local cells in record time after January 2011, Ennahda stood head and shoulders above most of the other parties that competed in the 2011 elections. The unparalleled electoral victory of a group that promoted the Islamist agenda, therefore, raised concerns and suspicion. These concerns were exacerbated by the perception that it did not suffer from the internal divisions that contrasted so vividly with the low levels of institutionalization of other parties and, taken together, gained Ennahda a reputation as an "intimidatingly well-organized" political actor (Marks, 2014, p. 5). Fears were only enhanced by the fact that the party continued with its charitable activities after entering parliamentary politics and continued to impact society through hundreds of loosely affiliated charities (Marks, 2014, p. 18). Ennahda's tentative, sometimes ambivalent, position towards radical Islamists gave the impression that its leaders

---

<sup>93</sup> BBC News, "Tunisian Islamist Leader Rachid Ghanouchi returns home", 30 January 2011, available at: <https://www.bbc.co.uk/news/world-africa-12318824> [accessed 3 September 2018].

were engaged in sophistry; moderate when talking to those on the outside, yet more fundamentalist in its attitudes when communicating with its base.<sup>94</sup>

*Other Parties of the Governing Coalition: The Congress for the Republic and Ettakatol*

Two other parties entered the governing coalition along with Ennahda, the CPR and Ettakatol. The parties had a shared history of opposing Ben Ali's regime and, crucially, during the run-up to 2011 elections refrained from campaigning on the polarization between Islamists and secularists, which made them suitable coalition partners. The CPR was never legalized under the previous regime due to its leader, Moncef Marzouki, a human rights activist, taking an uncompromising stance against the regime. The party, held together by his personality, combined members of different ideological leanings, including those with left-wing, Arab nationalist, and Islamist views. This mixture resulted in tensions soon after the elections (Wolf, 2014, p. 7). By December 2013, a month before the adoption of the constitution, the party had lost more than half of its deputies. Some of them founded the conservative Wafa Movement, which retained close ties to its mother party and Ennahda but refused to enter the government. Ettakatol, a centre-left, social democratic party, was founded in 1994 by Mustapha Ben Jaafar, an opposition figure who grew dissatisfied with the uncritical position taken by his party, The Movement of Socialist Democrats,<sup>95</sup> vis-à-vis Ben Ali's regime and his repression of Islamists. Legalized in 2000s, Ettakatol did

---

<sup>94</sup> Author Interview with Hama Hammami, leading member of the leftist Popular Front, 14 December 2016, Tunis.

<sup>95</sup> That party was essentially a splinter group formed from members of the post-independence President Bourguiba's Neo-Destour Party (Haugbølle and Cavatorta, 2011, pp. 332-3).

not enter parliament before 2011, preferring to retain its oppositionist credentials (Brody-Barre, 2013, p. 218).

The parties' position in the NCA was to some extent schizophrenic, as their ideological preferences with respect to the constitution were often closer to some opposition, non-Islamist parties than to Ennahda's. As one of Ettakatol deputies described it, "Troika was a coalition to run the affairs of the country... [During the work on the constitution, the key] was the vision for the society. And there, we often diametrically opposed Ennahda."<sup>96</sup> Ettakatol's parliamentary bloc, consequently, suffered from floor-crossing and fell from 20 to 12 seats at the end of 2013 (see Table 3). Compared to the CPR, which was widely seen as Ennahda's ally due to having an Islamist-leaning wing within it, Ettakatol's defence of the notion of the division between religion and state gained it respect among the wider opposition (Wolf, 2014, p. 9), and the party was, as a result, able to play a bridging role in constitutional negotiations at times of deadlock.

### *Non-Islamist Opposition*

The results of the 2011 elections saw the opposition camp fragmented between several smaller groups, from left to right of the political spectrum, who united in their dislike of Ennahda and, especially later, strove to remove the Islamist party from government. A key member of the opposition bloc was Al-Massar (Democratic and Social Path) formed in Spring 2012 by merging the long-standing Ettajdid Movement (Movement for Renewal), parties of the Democratic Modernist Pole electoral coalition, and the Tunisian Labour Party, which was not represented in the NCA. Al-Massar was

---

<sup>96</sup> Author Interview with Mouldi Riahi, 8 October 2015, Tunis.

dominated by members of Ettajdid, formerly a communist party that underwent a transformation into a centre-left group, and was the only party with some opposition credentials, holding a number of seats in the national parliament between 1994 and 2009 (Storm, 2014, p. 72), although they never entered government. Motivated by an anti-Islamic tendency, which Al-Massar inherited, Ettajdid begun toning down its criticism of the regime in the mid-1990s (Storm, 2014, p. 80; Haugbølle and Cavatorta, 2011, p. 334). It succeeded in attracting some of the disenchanted members of Ettakatol who crossed the floor to join its ranks. At the time of the adoption of the constitution, Al-Massar had 10 seats in the NCA.

Similar to Al-Massar, Al-Jomhouri (Republican Party) was also a product of a mix of several parties, foremost of which was the Progressive Democratic Party. During the 2000s, the PDP leader, lawyer and former Marxist Ahmed Najib Chebbi, became increasingly sceptical of Ben Ali's pledges of gradual democratization. Understanding the need to form a wider anti-regime coalition, Chebbi, along with Marzouki, was at the forefront of the creation of the 18 October Collectif in 2005, an opposition platform that also involved Ennahda (Haugbølle and Cavatorta, 2011, pp. 330-6; Storm, 2014, p. 98). Chebbi's tactics, however, changed after the revolution when his party became a champion of those opposed to the Islamists. The union of the centre-left Al-Jomhouri was short-lived, and with most of the PDP's partners leaving it, the number of seats Al-Jomhouri's held dropped to 7 at the time of the adoption of the constitution. The Democratic Alliance, created in 2012 by former PDP members who became disenchanted with Chebbi's leadership, controlled 11 seats (Carter Center, 2014, p. 47).

Further on the left of the political spectrum and holding no less anti-Islamist positions could be found the Popular Front (PF). Created in October 2012, the

coalition, rather than a unified party, with former opposition figure Hama Hammami as its spokesperson, brought together 12 smaller radical left and Arab nationalist parties whose electoral gains in the 2011 elections were insignificant. Among others, it included Hammami's Workers' Party, Parti communiste des ouvriers de Tunisie (PCOT), before 2011 a clandestine opposition force of those with a Marxist-Leninist backgrounds, and the Democratic Patriots Unified Movement (WATAD) of Chokri Belaid whose assassination foreshadowed the political crisis of 2013.<sup>97</sup> The PF's seat share in the NCA never exceed 10 (Honwana, 2013, p. 158),<sup>98</sup> nevertheless, polls from October 2013 put the party in third place, indicating its actual leverage was greater than its seat share might indicate.<sup>99</sup> As Hammami told me, "As the Popular Front, we had 5 to 6 deputies, but our weight was bigger than the number of deputies would suggest", pointing to the support of the "street" the party could call on at key points.<sup>100</sup> Despite its secular ideological background, the PF initially sought to present itself as an alternative to the Islamist-secularist bipolarization. The hostility between Ennahda and the PF gained traction again after the assassination of one of the PF leaders in February 2013, as members blamed Ennahda's non-assertive approach to radical

---

<sup>97</sup> For a full list of the individual parties that joined forces in the PF, see Sallon, H., "Tunisie : qui sont les principaux partis politiques ?", *Le Monde Afrique*, 13 February 2013, available at: [https://www.lemonde.fr/tunisie/article/2013/02/13/tunisie-qui-sont-les-principaux-partis-politiques\\_1831005\\_1466522.html](https://www.lemonde.fr/tunisie/article/2013/02/13/tunisie-qui-sont-les-principaux-partis-politiques_1831005_1466522.html) [accessed 3 September 2018].

<sup>98</sup> It is difficult to pinpoint the exact number of seats the coalition held due to the fact that the parties continued to act separately in the NCA, rather than under the PF banner.

<sup>99</sup> IRI, "Survey of Tunisian Public Opinion", International Republican Institute and ELKA Consulting, 1-2 October 2012, available at: <http://www.iri.org/sites/default/files/2013%20December%203%20Survey%20of%20Tunisian%20Public%20Opinion%2C%20October%201-12%2C%202013.pdf> [accessed 3 September 2018].

<sup>100</sup> Author Interview with Hama Hammami, 14 December 2016, Tunis.

Salafists for the attack. This tense relationship lasted until the adoption of the constitution (Honwana, 2013, p. 158).

Within the NCA, some of the opposition parties coalesced into the Democratic Bloc. The bloc included members of the PDP, Democratic Alliance, Al-Massar, the smaller, business-oriented Afek Tounes, the PF, and deputies who had previously left Ettakatol, as well as independents. At its height in December 2012, it had 35 deputies, making it the largest political entity after Ennahda which controlled 89 seats.<sup>101</sup>

### *Not Anti-authoritarian but Influential: Nidaa Tounes*

The leading force among Ennahda opponents did not, however, appear on the political scene before June 2012, when Nidaa Tounes (Call for Tunisia) was founded by Beji Caïd Essebsi, a prime minister in the post-revolution interim government between March and October 2011, who had also held several key political positions before the revolution. Calling for unity of the secularist parties,<sup>102</sup> Nidaa Tounes attracted people from different political traditions including proponents of the liberal left and unionists, artists and intellectuals, a newly politicized economic elite, and former members of Ben Ali's RCD (Geisser and Perez, 2016, pp. 36-7; Wolf, 2014, p. 15).<sup>103</sup> What brought them together was a shared concern with Ennahda's dominance. As one of its

---

<sup>101</sup> Weslaty, L., "Le bloc démocratique, deuxième force à l'Assemblée Constituante après Ennahda", Nawaat, 24 December 2012, available at: <https://nawaat.org/portail/2012/12/24/le-bloc-democratique-deuxieme-force-a-lassemblee-constituante-apres-ennahda/> [accessed 3 September 2018].

<sup>102</sup> Amara, T., "Tunisian ex-PM launches secular party to challenge Islamists", Reuters, 16 June 2012, available at: <https://www.reuters.com/article/us-tunisia-party/tunisian-ex-pm-launches-secular-party-to-challenge-islamists-idUSBRE85F0I220120616> [accessed 3 September 2018].

<sup>103</sup> Geisser and Perez (2016, pp. 36-7) cite the example of the head of the electoral list in the district of Kasserine under Nidaa Tounes for the 2014 elections, who was previously a member of the RCD's central committee. More figures of this kind could be found in Nidaa's top ranks.

leading members remarked, at the centre of the party's existence was the ambition to "defeat Ennahda."<sup>104</sup> Due to its links to the authoritarian regime, the party cannot be counted as a force of the anti-authoritarian coalition. However, given its influence on securing the agreement on the final constitution through negotiations with Ennahda in the last phase of the constitution-making process, it is, nonetheless, considered in the analysis.

Despite being formed outside of the NCA and not springing from parties that won representation in the October 2011 ballots, the party gained NCA representation by attracting deputies who crossed the floor, mainly from the CPR and Ettakatol. In January 2014, Nidaa's NCA base was six members (Carter Center, 2014, p. 47). These deputies were instrumental in pushing Nidaa Tounes' agenda within the Assembly, but the party's influence went far beyond that. By autumn 2013, Essebsi had emerged as the leading voice of the secularist opposition. This could be seen in opinion polls from October 2013, which suggested Nidaa Tounes popularity was even higher than Ennahda's.<sup>105</sup> Being recognized as Ghannouchi's main counterpart, Essebsi participated in key political negotiations.<sup>106</sup> The results of the 2014 parliamentary and presidential elections which followed upon the conclusion of the constitution-making process further illustrate Nidaa's strength. Essebsi became the new president, and

---

<sup>104</sup> Author Interview with Mahmoud Ben Romdhane, 8 December 2016, Tunis.

<sup>105</sup> IRI, "Survey of Tunisian Public Opinion", International Republican Institute and ELKA Consulting, 1-2 October 2012.

<sup>106</sup> This includes the meetings between Ghannouchi and Essebsi in Paris in August 2013, which was seen as a turning point in the political crisis that had started with the assassination of leftist NCA deputy, Mohamed Brahmi. See Dahmani, F., "Que se sont dit Rached Ghannouchi et Béji Caïd Essebsi à Paris ?" *JeuneAfrique*, 20 August 2013, available at: <http://www.jeuneafrique.com/169039/politique/que-se-sont-dit-rached-ghannouchi-et-b-ji-caed-essebsi-paris/> [accessed 3 September 2018].

Nidaa Tounes obtained 37.56 % of the parliamentary vote, leaving Ennahda languishing behind with 27.79 %.<sup>107</sup>

Secularist, opposition parties entered a tighter coalition with Nidaa Tounes when they created the National Salvation Front (NSF) after a second leftist politician, Mohamed Brahmi, was assassinated in 2013. Apart from Al-Jomhuri, Al-Massar and other entities who supported Nidaa from the very beginning, it also included left-wing members of the PF, previously critical to the party's ties to the former regime.

*Marginal: Aridha Chaabia*

Ennahda was not the only Islamist party that received considerable electoral support in 2011. To the surprise of many observers, Aridha Chaabia fared well in the NCA polls, winning 26 seats. The newly formed Islamist populist party campaigned on themes of religious reform and unrealistic pledges of social welfare programmes. Its founder and former Ennahda member, Mohamed Hechmi Hamdi, a London-based business tycoon continued to lead his party from abroad after the October 2011 elections.<sup>108</sup> The party, however, suffered from fragmentation soon after the 2011 elections, with many of its members becoming independent deputies, and remained at the margins of the constitution-making process. Non-Islamist opposition parties, nevertheless, feared that its former deputies, along with the Islamist-leaning wing of the CPR and other religiously conservative independents in the NCA, could join forces with Ennahda to push through their conservative constitutional vision.<sup>109</sup>

---

<sup>107</sup> Election Guide, "Tunisian Republic, Election for Majlis nawaab ash-aa'b, Tunisian Assembly of People's Representatives", IFES, 26 October 2014.

<sup>108</sup> Cherif, Y., "Democracy in the making", Majalla, 26 February 2014, available at: <http://eng.majalla.com/2014/02/article55248709> [accessed 3 September 2018].

<sup>109</sup> Author Interview with Lobna Jeribi, Ettakatol, 23 November 2016, Tunis.



The Tunisian partisan spectrum after the revolution was diverse and difficult to navigate due to its lack of institutionalization. However, it is possible to say that the religious cleavage was the major political divide that framed Tunisian politics post-2011 and the debates on the new constitution. This divide widened throughout the constitution-making process, and the creation and popularity of Nidaa Tounes as a primarily anti-Islamist vehicle exemplifies this development. Still, cross-ideological cooperation was not totally absent after the revolution, as was apparent in the governing Troika coalition, which combined both Islamist and non-Islamist elements.

Throughout the constitution-making process, the Islamist Ennahda maintained the strongest position, controlling 41 % of seats in the NCA. Initially highly fragmented opposition parties from the left to the right of the political spectrum were, however, increasingly able to coalesce against Ennahda. The foundation of Nidaa Tounes tipped the scales of power even more in favour of the opposition, making the political scene during the final phase of the constitution making process more balanced between the proponents of a stronger role for religion in politics and those who opposed such a change. As Mustafa Ben Jaafar, the NCA President representing Ettakatol put it: “They [the opposition parties] gradually reappeared on the political scene and resembled around this new-born, Nidaa Tounes. As a result, the balance of power began to change.”<sup>110</sup>

#### 4.2.2 Anti-Mubarak Coalition in Egypt

As in Tunisia, the rift that separated Islamists and secularists, muted during the

---

<sup>110</sup> Quoted in M’rad (2015, p. 62).

uprising in which they joined forces,<sup>111</sup> came to the fore again in the lead up to the first democratic elections for which an Islamist victory was predicted.<sup>112</sup> Political parties were internally divided by organizational, generational, and ideological issues. In addition, they were pitted against each other by the “divide and rule” tactics of the Mubarak regime, which, while co-opting some groups by enabling them to participate, to a limited extent, in politics, excluded and repressed others (Steuer, 2012; Shehata, 2010).

The ideological underpinning of the religious cleavage relates to the importance that the two camps attributed to the role of religion in politics. The best example is their contradictory understandings of the concept of a “civil state” (*al-dawla al-madaniyya*), which was, for all these groups the ideal arrangement for the post-revolutionary political order to which they aspired. To the secular forces and intellectuals, the term denoted separation between religion and the state, and strong guarantees for human rights, including equality between men and women, and Muslims and non-Muslims (Steuer and Blouët, 2015; Hill, 2014). The Islamist Muslim Brotherhood, and the FJP that it created, also endorsed the concept of the civil state, but “with an Islamic frame of reference” (Brown and Hamzawy, 2010, p. 14).

However, this understanding of the concept might be, according to Steuer and Blouët (2015, p. 241), in contradiction with some elements of the idea of modern citizenship and, hence, the secularists’ vision. For example, the Islamic normative

---

<sup>111</sup> Sallam, H., “Reflections on Egypt After March 19,” *Jadaliyya*, 31 May 2011, available at: <http://www.jadaliyya.com/pages/index/1728/reflections-on-egypt-after-march-19> [accessed 5 September 2018].

<sup>112</sup> See “National Voter Survey in Egypt”, Al-Ahram Centre for Political and Strategic Studies, 22 August 2011, available at: <http://dipd.dk/wp-content/uploads/2011/08/Egypt-Survey-1-August-2011.pdf> [accessed 5 September 2018].

framework, sharia, might have been difficult to reconcile with some aspects of a citizen's freedoms, including freedom of faith and speech. Ideological differences, and especially secularists' doubts over the MB's commitment to democratic principles, coupled with the Brotherhood's strong popularity among voters compared to the rest of the opposition and made them extremely wary and cautious (Shehata, 2010). According to a liberal opposition politician, Amr Hamzawy, secularists, historically, had been afraid that if the regime opened up political competition, "the only – that is the only organized – force which is out there, ready to 'hijack'... the process through the ballot box... is the MB". For Hamzawy, the mistrust that alienated Islamists and secularists, therefore, to some extent, resulted "from weakness".<sup>113</sup>

Despite these antagonisms, cooperation and coalition building across the dividing lines did occur before 2011. Reviewing over 20 attempts at alliance building between Egyptian Islamists and secularists in the period from 1980s to mid-2000s, Shehata (2010) noticed greater cooperation in the 1980s, and between 2000 and 2004, although she argued these alliances were short-lived and mostly tactical (2010, p. 3, p. 51). This included electoral alliances forged between the MB and secular parties. In addition, Islamists and secularists had the opportunity to meet and co-operate as they joined the leadership of the unions. The Egyptian Movement for Change (Kifaya) formed in 2004 around leftists, liberals and Islamists, provides an example of the most long lasting cooperation. The platform, which organized a series of protests between 2004 and 2005, called for political and constitutional reform that would allow for competitive elections, limit presidential terms to a maximum of two, and restrict a president's powers (2010, pp. 100-2).

---

<sup>113</sup> Author Interview with Amr Hamzawy, 8 October 2017, Prague.

Some of these efforts continued after Mubarak resigned. Major forces of the anti-Mubarak coalition organized regular meetings between February and March 2011 to agree on a roadmap for transition.<sup>114</sup> Further, some of the left-wing and liberal parties joined the FJP to create an electoral coalition for the 2011/12 legislative elections named the Democratic Alliance for Egypt, which aimed to bridge the religious divide. This alliance in the end was dominated by the FJP as most of its non-Islamist partners eventually withdrew from the initiative.<sup>115</sup> However, the general tendency after 2011 was towards a parting of the ways between the FJP and secularists and increasing polarization along religious lines. This development was followed by the FJP's rapprochement with more conservative Salafi parties on the one hand, and the liberals and leftists on the other coalescing with the military prior to the intervention of the generals in politics in July 2013. This latter alliance was tangibly expressed by the presence of secularists in the subsequent cabinet and the new constitution-making process (Dunne and Hamzawy, 2017, pp. 11-21).

The remainder of this chapter introduces the major political parties of the anti-Mubarak coalition in more detail. Although the party system in Egypt shared many of the characteristics of the weakly institutionalized party system that I found in Tunisia, political parties remained more coherent throughout the constitution-making process, possibly because it developed over a shorter time period. This situation made identifying major political parties simpler. I restricted the analysis to parties that won

---

<sup>114</sup> Hamzawy, A., "Seven years on: Why Egypt failed to become a democracy?", Middle East Eye, 12 December 2017, available at: <https://www.middleeasteye.net/columns/why-egypt-failed-be-democracy-1109856918> [accessed 31 August 2018].

<sup>115</sup> Egyptian Election Watch, "Democratic Alliance (Freedom and Justice)", Ahram Online, 18 November 2011, available at: <https://www.middleeasteye.net/columns/why-egypt-failed-be-democracy-1109856918> [accessed 31 August 2018].

over 2 % of seats in the People's Assembly, the lower and more powerful chamber of the parliament. I kept the threshold low to be able to account for non-Islamist parties, whose electoral gains were often just above this limit. I have also chosen to rely on the percentage of seats as opposed to the percentage of votes because the latter figure is not available for each separate political party and, in most cases, only for electoral coalitions. If we follow the logic of cleavage lines introduced above, the anti-Mubarak coalition can be seen as comprising several overlapping political streams: the moderate Islamist one comprising the FJP and the Wasat (Centre) Party, conservative Islamists of the Salafi persuasion, and their non-Islamist opponents comprising those of liberal, left-wing and Arab nationalist backgrounds.

#### *Freedom and Justice Party and Wasat Party*

The moderate, Islamist side of the political spectrum was accounted for primarily by the FJP, the political wing of the Muslim Brotherhood established shortly after the revolution and officially recognized in May 2011 (Sallam, 2013, p. 94). Securing 45 % of the seats in the PA and the presidency, the FJP was by far the strongest political party in post-revolutionary Egypt (Table 2). The origins of the MB go back to 1928 when an Islamist thinker, Hassan Al-Banna, founded the movement with the goal of changing society through charitable work and preaching. In the 1970s, the group rejected violence, which its members had previously endorsed, as a response to the persecution they had suffered under the first post-independence president, Gamal Abdel Nasser (Ashour, 2009). Instead, they decided to challenge the regime through the ballot box, despite not being recognized legally. Throughout the period of the limited multiparty system introduced by President Anwar Sadat in the late 1970s and maintained by his successor, Mubarak, the MB contested a limited number of seats in

every election except for the 1990 and 2010 polls, either by fielding independent candidates or by running through the lists of other parties.<sup>116</sup> The movement's remarkable showing in the 2005 polls, which were expected to be the freest in Egyptian history post-1952, demonstrated the MB's capacity to attract voters to a far greater extent than any other opposition party. However, it also generated a harsh response from the regime that involved electoral violence, arrests, and further harassment (see e.g. Abdulbaki, 2010).<sup>117</sup> While the FJP and MB maintained that they were two separate entities, with the Brotherhood prioritizing social activities and preaching as opposed to the FJP's political engagement, the dividing line between them remained blurred.<sup>118</sup>

Throughout their parliamentary activity in the authoritarian context, the MB deputies consistently demonstrated their endorsement of democratic reforms as they regularly stood up against human rights violations and the decline of political freedom after the 2005 elections. However, they also continued to pursue the movement's religious agenda through calls for the application of sharia, even if this was done less

---

<sup>116</sup> A small number of MB deputies were elected to the People's Assembly on five occasions before the revolution. The MB won 8 seats in the PA in 1984, 37 seats in 1987, 1 seat in 1995, 17 seats in 2000, and 88 in the 2005 elections. Throughout these years, the number of seats in the PA ranged between 447 and 458. The MB boycotted the 1990 and 2010 polls. See DRI (2007: 15) and Hill, E., "Primer: Egypt's political parties", Al-Jazeera, 24 November 2010, available at: <https://www.aljazeera.com/news/middleeast/2010/11/20101118132548312750.html> [accessed 8 September 2018].

<sup>117</sup> The MB won 88 seats in the 454-member PA. In comparison, the opposition party that came second won only 6 seats. See Hill, E., "Primer: Egypt's political parties", Al-Jazeera, 24 November 2010.

<sup>118</sup> For instance, Sallam (2013, pp. 96-7) highlighted the fact that the MB leadership gave directives to its members to join the FJP. If they did not, they were expelled, as was the case with members of the Current Party established after the revolution by a younger generation of the Muslim Brothers. For a detailed analysis of the internal workings of the FJP, see Vannetzel (2017).

vigorously.<sup>119</sup> These ambiguities translated into the fears that their opponent had; that the MB would dominate post-revolution politics, the writing of the new constitution and, ultimately, succeed in carrying out its religious goals.<sup>120</sup>

The other moderate Islamist entity in the PA was the Wasat (Centre) Party, which received 2 % of the seats. It was founded in 1996 by a group of former MB members as an alternative to their mother organization, with which it had maintained a strained relationship ever since (Sallam, 2013, pp. 253-4). Its members participated in the opposition Kifaya movement, and consequently maintained good relationships with non-Islamists (2013, p. 254).

### *Salafist Parties*

The Salafist parties offered a conservative Islamist alternative to the FJP, whose engagement in politics they used to criticize from an ideological standpoint before the revolution (al-Anani and Malik, 2013, p. 59). However, despite their previous disdain for political activity, the post-2011 politics saw not one but several political entities emerge around Salafi leaders and the prominent Salafi organization, the Salafi Call (Al-Da'wa Al-Salafiyya). The most popular of them all turned out to be the Nour Party, which led an electoral coalition into the 2011/12 polls that, to general surprise,

---

<sup>119</sup> This is based on an analysis of the MB's parliamentary activity in the period between 2000 and 2010, produced by Brown and Hamzawy (2010).

<sup>120</sup> While the FJP's leaders constantly reassured their opponents that they sought to "participate, not to dominate", they undermined these pledges on several occasions. This was, most crucially, in the run-up to the 2011/12 parliamentary elections when the FJP, contrary to earlier promises not to contest more than half of the seats, ran in around 70 % of constituencies (Sallam, 2013, p. 101). A few months later, contrary to previous assurances, the FJP also fielded a presidential candidate. See CNN Wire Staff, "Muslim Brotherhood: 'We are not seeking power'", CNN, 10 February 2011, available at: <http://edition.cnn.com/2011/WORLD/africa/02/09/egypt.muslim.brotherhood/index.html> [accessed 3 September 2018].

received 24.7 % of the seats in the PA, the second strongest showing (Table 2). Observers have attributed their electoral success to the fact that Salafists had developed a network that provided social services prior to the revolution, as well as to the resonance their conservative ideology found among pious Egyptians. Added to this, they proved to be skilful in their campaigning and outreach activities ahead of the first democratic polls (al-Anani and Malik, 2013, p. 64). However, despite embracing the democratic process, illustrated by their entry into the electoral arena, the parties held ambiguous positions towards some of the core principles of liberal democracy, especially concerning equal citizenship, personal freedom, and women's rights (2013, p. 63, p. 68). They are, therefore, included as members of the anti-Mubarak coalition only with considerable reservations.

### *Non-Islamist Opposition*

The non-Islamist camp was considerably more fragmented, comprising already established parties as well as new ones. Ten parties shared 18.6 % of the seats in the PA.<sup>121</sup> The most popular of them, with 7.6 %, was the oldest, the liberal Wafd Party. Wafd was the only party of the anti-Mubarak coalition apart from the FJP that had established networks of branches across Egypt and had sufficient personnel and financial resources to field candidates in most districts for the parliamentary elections (Dunne and Hamzawy, 2017, p. 13). Its roots went back to 1919, when its predecessor, the Delegation Party, had been formed. After rebranding itself and gaining its legal

---

<sup>121</sup> The figure does not include the seats won by the Revolution Continues Coalition, which secured an additional 1.4 % of seats. However, the coalition also included the Current Party formed by the younger generation of the Muslim Brothers. The exact figures for individual parties within this electoral coalition are not available.



status in 1984 (Sallam, 2013, p. 233), Wafd participated in all elections, except for one, during the period of a limited multiparty system between 1984 and 2010, winning a relatively small share of seats on each occasion.<sup>122</sup> The party adopted a more conciliatory stance towards Islamists than some other secular parties. It joined the Democratic Alliance, an electoral coalition for the 2010/11 PA elections that also included the FJP, but it eventually withdrew. According to Dunne and Hamzawy (2017, p. 14), Wafd's deputies worked with the FJP and even Salafist parties, also represented in the short-lived PA. Another secular party running under the banner of the Democratic Alliance and opposing divisions along the religious lines was the Karama (Dignity) Party led by a prominent left-wing Arab nationalist opposition figure, Hamdeen Sabahi. While securing only a marginal share of seats in the PA, the 20.7 % of votes that Sabahi received in the first round of the 2012 presidential elections indicate that the party's popularity had grown substantially.

The other two non-Islamist entities that ranked just below the Wafd Party in the parliamentary ballots adopted a less conciliatory stance towards Islamists. The centre-left ESDP was founded in March 2011 but united members of opposition groups who were politically active before the revolution. Among them was its founder, the dissident Mohamed Abul Ghar (Sallam, 2013, p. 67). Winning 3.2 % of the seats in the PA, it established itself after 2011 as the leading leftist political force. A brand-new party, the business-oriented FEP was launched in April 2011 by a Coptic telecommunication tycoon, Naguib Sawiris. Building on the support of Coptic

---

<sup>122</sup> In the 1984 and 1987 elections, the party garnered 50 and 36 seats, respectively, in the 458-member PA. However, its support fell considerably after that date, with the party winning only 6 or 7 seats in the subsequent elections. In 2005, Wafd won 6 seats, compared to 88 won by the MB (DRI, 2007, p. 15).

Christians, as well as on Sawiris' business network, it won 3 % of the PA seats. Both parties campaigned from within the Egyptian Bloc, an electoral coalition that united left-wing and liberal forces against Islamists. Ahmed Said, the leader of the FEP, explained that he entered politics to "fight the Brotherhood", since he "hate[d] the idea of mixing politics and religion".<sup>123</sup> Dunne and Hamzawy (2017, p. 15), the latter himself being an independent non-Islamist MP in the PA elected in 2011/12, noticed that "tensions and mistrust" between the FJP and Salafi deputies on the one hand, and the secular deputies of the Egyptian Bloc on the other, were obvious from the first parliamentary session. When the SCC dissolved the Islamist-dominated PA in June 2011, both the FEP and ESDP welcomed the decision.<sup>124</sup>

The increasing antagonism between the FJP and its non-Islamist counterparts provided a backdrop for the secular-leaning parties to cling together more tightly in the second half of 2012. Polarization hit its peak on 22 November 2012 after President Morsi issued his controversial Constitutional Declaration, which they rejected outright.<sup>125</sup> The secular opposition platform, the National Salvation Front (NSF), formed in the following days, brought together the Wafd Party, the ESDP, the FEP, and the Karama Party, as well as other secular politicians and smaller parties. The NSF used their combined weight to campaign against the new constitution.<sup>126</sup> If we consider the 36.2 % of voters who voted against the adoption of the constitution as a

---

<sup>123</sup> Author Interview, 8 August 2014, Cairo.

<sup>124</sup> Author Interview with Ahmed Said, 8 August 2014, Cairo.

<sup>125</sup> See Chapter 5 for more detail.

<sup>126</sup> BBC, "Profile: Egypt's National Salvation Front", 10 December 2012, available at: <https://www.bbc.com/news/world-middle-east-20667661> [accessed 5 September 2018].

vote for the NSF,<sup>127</sup> and compare it with their combined vote in the 2011/12 PA elections that reached just 19.5 % of the total,<sup>128</sup> it is clear that the secular parties had become capable of mobilizing a larger segment of population. However, this union came late in the constitution-making process to enforce any changes.

As was the case in Tunisia, the post-2011 political scene in Egypt and the debate about the new constitution, was shaped primarily by the divide between Islamists and non-Islamists. Controlling 45 % of seats in the PA, the lower chamber of the parliament elected after the uprising, the FJP was well-positioned to maintain considerable influence over the text of the constitution. Non-Islamists of the anti-Mubarak coalition remained weak and fragmented during most of the constitution-making process. Apart from the FJP, non-Islamists also faced a strong block of religiously conservative Salafist parties, which, in contrast to the more pragmatic FJP, aimed at strengthening the role of religion in the constitutional framework. Even though observers stressed differences between the FJP and Salafists concerning the constitution,<sup>129</sup> as the strife between the FJP and non-Islamists increased during the autumn months of 2012, it was among Salafists that the FJP looked for allies to finalize the constitution.

---

<sup>127</sup> BBC, "Egyptian voters back new constitution in a referendum", 25 December 2012, available at: <https://www.bbc.co.uk/news/world-middle-east-20842487> [accessed 5 September 2018].

<sup>128</sup> The figure is the total of the vote share that the secularist parties gained in the 2011/12 PA elections. Combined, parties of the Egyptian Bloc and the Wafd Party won 19.5 % of the vote. See Table 2.

<sup>129</sup> See Knell, Y., "What will Salafists' election success mean for Egypt?" BBC News, 12 December 2012, available at: <https://www.bbc.co.uk/news/world-middle-east-16112833> [accessed 3 September 2018].

### **4.3 Conclusion**

This chapter has served as an introduction to the analysis of the design of the constitution-making processes implemented in Egypt and Tunisia, the factors that initiated them, and the constitutional (dis)agreement that will be dealt with in depth in Chapter 5-7. Its purpose was twofold. Firstly, to describe the transition processes that followed the 2010/11 uprisings and assess whether democratic transitions were completed. It identified the fact that in both cases, removing authoritarian presidents from office in January and February 2011 was, of itself, insufficient to secure democratic transitions, as other authoritarian forces and institutions remained entrenched in the politics of each country. The transition in Tunisia, nevertheless, was smoother compared to that of Egypt, where efforts at democratization were weakened by the ambitions of the SCAF to retain power. These ambitions, along with other problems, most pressingly the controversial decision of the activist SCC to dissolve the lower and more important parliament's chamber, the PA, proved to be significant obstacles to the consolidation of democracy.

Secondly, the chapter identified and introduced the key political parties of the anti-authoritarian coalitions, and explored the divides that separated them. I demonstrated that in both countries, groups that were to draft the new constitutions were divided, especially by religious cleavages, which set Islamist and non-Islamist parties apart. The chapter also pointed out the differences in the distribution of power between the two political camps in the Egyptian and Tunisian cases. Although the major Islamist forces of the anti-Ben Ali and anti-Mubarak coalitions, Ennahda and FJP, engendered comparable support in the first democratic elections following the uprisings, in Tunisia the distribution of power between Islamists and secularists turned out to be more balanced.

This was partly because of the electoral popularity of more conservative Salafist forces in Egypt, which fared better than secular-leaning parties. Winning 24.7 % of the seats, the Salafi electoral alliance emerged as the second strongest force in the PA. Religiously conservative parties were also present in Tunisia. Aridha Chaabia, for example, came third in the NCA 2011 elections. Still, the party obtained only 12 % of seats in the NCA, only half of what the Salafists had won in Egypt. As a political force it crumbled soon after the election, becoming a marginal player in the constitutional change process. On the other hand, during the constitution-making process which developed between October 2011 and January 2014, secular parties in Tunisia succeeded in consolidating their position. This was, in one respect, because they found a way to coalesce more tightly. The emergence of a new party, Nidaa Tounes, onto the political scene was to prove decisive. Although its democratic credentials remained in doubt, it became increasingly popular and was able to counter-balance Ennahda. As a result, power became more equally distributed across the Islamist and non-Islamist divide within the anti-authoritarian coalition in Tunisia than was the case in Egypt. Chapter 5 now explores (dis)agreements on the new constitutions in Egypt and Tunisia.

## **Constitutional (Dis)Agreement**

The previous chapter has illustrated the fact that anti-authoritarian coalitions in both Tunisia and Egypt were divided along numerous political cleavages, most noticeably the Islamist-secularist divide. This situation was exacerbated further by personal animosities, mistrust rooted in the previous decades of authoritarianism and in Islamist popularity with the electorate. This chapter, Chapter 5, now explores the main outcome studied in this thesis, constitutional agreement. To do so, it first examines the overall (dis)agreement on the constitutions. In Chapter 3, I suggested that “a substantial vote against the constitution motivated by fundamental disagreements” among parties of the anti-authoritarian coalition is an indicator of the absence of overall agreement (Higley and Gunther, 1992, p. 7). Negative statements by a political party or an unsupportive current accompanying the drafting, and to which no resolution is found, might also point to the lack of an overall agreement. It is clear that not everyone will be content with all the formulations that found their way into the text of the constitution. Contentious confrontations with “no sign of accommodation”, based on deep division, however, suggest that sufficient agreement has not been reached (Linz and Stepan, 1996, p. 4).

Firstly, empirical analysis presented in this chapter reveals that despite those considerable divisions that alienated political parties in Tunisia, deputies from parties across the anti-Ben Ali coalition, who were responsible for producing the new charter in the National Constituent Assembly, approved the constitution almost unanimously in January 2014, two years after negotiations officially commenced. Meanwhile, the

outcome of the five months of constitutional debates witnessed by Egypt's Constituent Assembly ended in an overall disagreement between the parties of the anti-Mubarak coalition on the document presented for the final vote in November 2012.

Secondly, this chapter investigates how these opposing outcomes came about by exploring individual areas of contention and how they were resolved. In particular, it asks what elements of the constitutions were most important and which were the most problematic in terms of reaching agreement. This involved an identification of the parties conflicting preferences and whether, perhaps, some elements of Egypt's draft constitution generated more controversy among the main protagonists of constitutional change than it did in Tunisia. Instead of considering constitutional agreement as a static, one-off event, this approach enables me to examine how agreement developed over time and what building blocks were involved in its construction.

While the analysis concentrates on the debates and individual (dis)agreements pertaining to the formal and written documents whose text directly specify that they are constitutions, it is also sensitive to other issues. In Chapter 3, I outlined the functional approach to understanding constitutions along with the debates among scholars about the institutional agreement which they theorized was an essential condition of democratization. Based on the constitutionalist literature, which stressed the aspects of constitutions whose function is to constrain and enable government (Elkins et al., 2009, pp. 38-40; Galligan and Versteeg, 2013, p. 6), it can be expected that political parties negotiating new constitutions after the downfall of an authoritarian regime will clash over the form of political institutions performing these functions. These are the type of executive-legislative relationships to be instituted and, perhaps less straightforwardly, also the specific clauses regarding individual rights

and freedoms, as well as those of any supreme or constitutional courts (Stone Sweet, 2014, pp. 151-2). More recently, authors inquiring into societies marked by religious divisions have highlighted the symbolic identity and value-oriented aspects of constitutions, pointing out that those drafting them might be divided over the status of religious law, religion-state relations, and identity issues (Bâli and Lerner, 2017; Brown, 2017).

Further, as part of their specifications for an institutional agreement, scholars of transitions stressed other potential important issues and those that might lead to conflict. These include the question of: (1) inclusiveness of the new regime, i.e. whether anti-democratic parties are allowed to enter the political competition, what the threshold is for entry, and whether there are guarantees for the representation of minorities; (2) the type of electoral system i.e. the formula for the distribution of seats, and the size and number of constituencies; (3) the form of the government; and (4) whether the state is unitary or federal (O'Donnell and Schmitter, 1986, pp. 69-70; Linz and Stepan, 1996, p. 4). Although these elements might not be part of the constitution, I consider how they meshed with negotiations over the constitutional clauses in case they coincided in time.

Chapter 5 provides evidence that in neither of the two cases did key divisions during the process of writing the constitutions pertain only, or most prominently, to the design of macro-political institutions. Other issues that led to conflicts were linked to the role of religion in the state and formulations about rights and freedoms. The diverging party preferences in the anti-authoritarian coalition on these issues set those drafting the constitution from the secularist camp apart from those in the Islamist camp in Tunisia to a similar extent as occurred in Egypt. The exploration also shows that the broad constitutional agreement in Tunisia that came together when the NCA



approved the constitution in January 2014, was possible thanks to compromises on individual issues negotiated during the two years of constitutional talks. The overall agreement materialized as secularist parties managed progressively to mould the constitution closer to their preferred shape.

In comparison, the overall disagreement in Egypt that manifested itself when non-Islamist parties of the anti-Mubarak coalition called for the rejection of the constitution in the December 2012 popular referendum, developed through content-related as much as procedural disagreements, and was ultimately aided by the broader political context. The chapter also points out that the constitutional agreement in Tunisia was inextricably interlinked with other political deals, most importantly relating to the resignation of the Ennahda-led government. The next section analyses the overall agreement in Tunisia and then deconstructs its building blocks.

## **5.1 Constitutional Agreement in Tunisia**

On 26 January 2014, 200 of 216 deputies of the Tunisian NCA approved the new constitution, a figure far beyond the necessary absolute majority.<sup>130</sup> The text enjoyed the support of both the largest Islamist party, Ennahda, and its secular-leaning opponents on the left and right of the political spectrum. This included MPs who had previously joined the ranks of Nidaa Tounes, Ennahda's main political rival.<sup>131</sup> The voting session evolved within a spirit of unity and joy, with political adversaries

---

<sup>130</sup> The NCA originally had 217 members, but one of the deputies died during the days leading up to the vote on the final draft of the constitution in January 2014.

<sup>131</sup> For the votes on the final constitution, see the website run by the non-governmental organization, Al-Bawsala. Marsad, "Adoption de la constitution de la République tunisienne dans sa totalité", 26 January 2014, available at: <https://majles.marsad.tn/fr/vote/52e598b212bdaa593ad566f2> [accessed 21 August 2018].

embracing each other while the public and members of civil society cheered from the balcony of the Bardo Palace. Across my interviews, NCA deputies and party leaders representing leftist, centrist, right-wing, Arab nationalist, Islamist and secularist inclinations, all agreed that the constitution was, overall, a success: “That is an extraordinary number. Everybody was happy with this constitution”, was a comment on the high approval rate by a leader of the secularist Al-Massar party and one of Ennahda’s most vocal critics.<sup>132</sup> The majority of the 12 negative votes came from deputies of the Current of Love (Al-Mahaba) who entered the NCA in 2011 under the banner of Aridha Chaabia.<sup>133</sup> The party, which I identified in Chapter 4 as a marginal player in the constitutional change process, rejected the constitution on the basis that it did not include a reference to Islamic sharia.<sup>134</sup> Even without their vote, however, the constitution’s approval went far beyond the “sufficient agreement” prescribed by Linz and Stepan (1996, p. 4).

That the constitution would receive such a high approval was not always expected. In June 2013, opposition deputies protested what was supposed to be the final draft of the constitution, claiming it did not represent the agreements reached at the level of the constituent commissions. Non-Islamists argued that the draft opened the door for theocracy, and assured me that if Ennahda had presented that version for

---

<sup>132</sup> Author Interview with Samir Taïeb, 2 October 2015, Tunis.

<sup>133</sup> Marsad, “Adoption de la constitution de la République tunisienne dans sa totalité”, 26 January 2014, available at: <https://majles.marsad.tn/fr/vote/52e598b212bdaa593ad566f2> [accessed 21 August 2018].

<sup>134</sup> AFP, “Tunisie: Les sept élus du Courant Al Mahabba se retirent des débats sur la future Constitution”, 11 January 2014, available at: [https://www.huffpostmaghreb.com/2014/01/11/courant-mahabba-anc\\_n\\_4581792.html](https://www.huffpostmaghreb.com/2014/01/11/courant-mahabba-anc_n_4581792.html) [accessed 21 August 2018].

approval, they would not have voted for it.<sup>135</sup> Ennahda government coalition partners, too, raised concerns about the remaining stumbling blocks, namely the religion-state relationship, and wanted to see those issues resolved before those working on the draft embarked on voting.<sup>136</sup>

In July 2013, when the second political assassination of a leftist opposition politician in the same year took place, tensions reached their peak. Around 60 deputies,<sup>137</sup> almost one third of the NCA, withdrew from the drafting body, denouncing both the draft constitution and the government's failure to deal with the worsening security situation.<sup>138</sup> As the deputies returned to the NCA in the autumn and winter months of 2013, and the negotiations re-commenced on the remaining divisive issues, few would have guessed that the constitution would eventually be approved by such a large margin: "I was sure we would have the two thirds [145 deputies]. But I think nobody believed that that we would arrive at 200 votes. That is enormous," remarked the constitution's General Rapporteur in retrospect.<sup>139</sup> This overall agreement came together over the two years of the constitutional negotiations in the form of individual agreements on the contentious issues, which I discuss below.

---

<sup>135</sup> Author Interviews with leftist opposition leader of the PF, Hama Hammami (14 December 2016, Tunis), and Selim Ben Abdessalam, originally an Ettakatol deputy who represented Nidaa Tounes at the time of the constitution's approval (6 June 2014, and 24 November 2016, Tunis).

<sup>136</sup> Author Interview with Lobna Jeribi, deputy from Ettakatol, 14 December 2016, Tunis.

<sup>137</sup> Estimates range from 42 deputies leaving the NCA in the first wave of withdrawals, to 70 during the peak of the crisis (Carter Center, 2014, p. 28). According to a former member of a local organization, Al-Bawsala, which monitored the NCA work and, at the time, counted the number of deputies that withdrew, the number never exceeded 60 (Author Interview with Ghada Louchichi, 11 November 2016, Tunis). This estimate is supported by an NCA deputy, Selim Ben Abdessalam, who argued that the total of withdrawn deputies was 57 (Author Interview, 23 November 2016, Tunis).

<sup>138</sup> Author Interview with Selim Abdessalam, 26 June 2014, Tunis.

<sup>139</sup> Author Interview with Habib Khedher, deputy for Ennahda, 25 November 2016, Tunis.

### 5.1.1 Agreement in the Making

To identify the most important and, at the same time, the aspects of the constitution that resulted in the greatest conflicts, as well as to understand whether, and how, these issues were resolved, I relied primarily on qualitative interviews with the NCA deputies. I asked them what they saw as the most important aspects of the constitution, which had proved the most difficult to reach consensus on, and how they had managed to resolve those differences. Having conducted interviews with members of all the main political forces of the anti-authoritarian coalition, both Islamist and non-Islamist, I was able to triangulate the different testimonies and to learn what each faction saw as the most important. I then contrasted this information with other material I had garnered. Specifically, I compared the progressive drafts of the constitution and consulted other primary documents which specified the controversial issues that were reconciled or provided the wording on which the parties eventually settled. These included documents produced by the NCA. Finally, I compared these findings with a detailed report on the constitution-making process produced by the Carter Center (2014).

Two different discourses about the timing of these agreements were put forward, one by Ennahda, and the other by their secularist rivals primarily within the opposition. Ennahda's deputies maintained that they made concessions on the key elements of the constitution well before the 2013 summer political crisis sparked by Mohamed Brahmi's death. To them, the conflict with their opponents was "political," not constitutional, meaning their opponents, led by Nidaa Tounes, ultimately sought to push them out of power, taking the constitution "hostage" in the struggle.<sup>140</sup> The

---

<sup>140</sup> Author Interview with Latifa Habachi, deputy for Ennahda, 25 November 2016, Tunis.

opposition, and even some of the Ennahda's coalition partners, said otherwise. They dismissed the penultimate draft in June 2013, arguing that it was a step towards building an Islamic state,<sup>141</sup> and insisted that Ennahda made key compromises after the 2013 crisis. As put by one left wing deputy: "It was only after the assassination of colleague Brahmi that we left the assembly, demanding the constitution is finished as soon as possible and in a consensual manner... [that] we could really seize concessions... We couldn't do that before."<sup>142</sup>

In the following sub-sections, I introduce some of the most divisive aspects of the constitutional negotiations and explore the resolution of these disputes, paying due attention to their timing. This will serve as a basis for the next chapter, where I assess the link between constitution-making design and constitutional agreement. The analysis shows that the issues that posed most problems in reaching a consensus on the drafts related to religion-state relationships, the universality of human rights, women's rights, and the configuration of the new political system. Evidence from qualitative interviews also points to the interlinkage of constitutional agreement with other political deals, most crucially about government change, the timing of subsequent presidential and legislative elections, and election of an independent electoral committee, the ISIE.

### *The Role of Religion, Rights, and Freedoms*

The place of religion in the constitutional framework and the status of Islamic sharia were highly divisive issues. Generally, non-Islamists preferred limiting the role of

---

<sup>141</sup> Author Interview with Selim Ben Abdessalam, 24 November 2016, Tunis.

<sup>142</sup> Author Interview with Mongi Rahoui, deputy for the Democratic Patriots Unified Movement, 2 July 2014, Tunis.

religion to that of providing a marker of identity as opposed to embedding it as an important element of the constitution. One of the secularist deputies explained that embedding one religion in the constitution could have had serious legal consequences and, in the most extreme scenarios, meant that all legislation had to conform to the principles of sharia.<sup>143</sup> Seeking to calm its opponents, prior to the 2011 elections, Ennahda's leadership promised not to include a direct reference to sharia in the constitution. Sharia had not been mentioned either in the former constitution introduced in 1959. Nonetheless, to the chagrin of the secularists, Ennahda's activists and some of its senior members in the NCA, accompanied by conservative deputies from Aridha Chaabia, argued that it should be otherwise. As a result, soon after the constitution-making process commenced, the inclusion of sharia became one of the most hotly debated topics in the NCA (Marzouki, 2017, p. 355; Wolf, 2017b, pp. 138-9).

In March 2012, after a heated public debate, strong opposition from non-Islamist parties, controversy within Ennahda itself, and pressure from Ennahda's coalition partners, Ennahda leader Rachid Ghannouchi confirmed that they would not insert sharia into the text (Marzouki, 2017, pp. 353-6). In an effort to prevent open strife over the first article of the constitution, those drafting the document agreed to keep this element of the 1959 Constitution unchanged. This resulted in Islam not being explicitly defined as the state religion but did leave the whole issue open to interpretation. It stipulated that "Tunisia is a free, independent, and sovereign state. Its religion is Islam, its language is Arabic, and its form of government is a republic." Article 2 of the 2014 Constitution, added to the text in April 2013, then confirmed

---

<sup>143</sup> Author Interview with Selim Ben Abdessalam, 24 November 2016, Tunis.

Tunisia as a civil state, eliminating potential ambiguity on this issue introduced by the preceding article.<sup>144</sup>

Despite the early breakthrough on sharia and the confirmation of the civil, as opposed to religious, nature of the state, the conflict over the role of religion extended to other parts of the constitution and continued to divide those drafting it right up until the approval of the final draft. For example, the formula that Islam was “the religion of the state” was kept as one of the components of the constitution that could not be amended and was still in the June 2013 penultimate draft which led to the controversy.<sup>145</sup> The statement in the preamble of the same draft that the drafters were building on the “fundamentals” of Islam was problematic for many deputies. Critics complained that such wording could have serious implications for the separation of politics and religion and the democratic character of the constitution.<sup>146</sup> Both issues were successfully settled in the last phase of constitution-making, through the Consensus Commission whose role I discuss in Chapter 6. The term “fundamentals of Islam” was replaced by a more widely acceptable expression of the “people’s commitment to the teachings of Islam”. Members of the CC also eliminated the divisive article on Islam as the state religion, while safeguarding Articles 1 and 2 that

---

<sup>144</sup> Author Interview with Lobna Jeribi, deputy from Ettakatol, 23 November 2016, Tunis. See also the constitution draft from 22 April 2012. ConstitutionNet, “Draft Constitution of the Tunisian Republic”, International IDEA, 22 April 2012, available at: [http://www.constitutionnet.org/sites/default/files/tunisian\\_constitution-22\\_april\\_2013- third draft - english-idea.pdf](http://www.constitutionnet.org/sites/default/files/tunisian_constitution-22_april_2013- third draft - english-idea.pdf) [accessed 21 August 2019].

<sup>145</sup> Article 141 of the 1 June 2013 draft. See ConstitutionNet, “Draft Constitution of the Tunisian Republic”, International IDEA, 1 June 2013, available at: [http://www.constitutionnet.org/sites/default/files/tunisian\\_constitution-1\\_june\\_2013 - fourth draft - english-idea.pdf](http://www.constitutionnet.org/sites/default/files/tunisian_constitution-1_june_2013 - fourth draft - english-idea.pdf) [accessed 21 August 2018].

<sup>146</sup> Author Interview with Mouldi Riahi, deputy for Ettakatol, 28 November 2016, Tunis.

tackled state identity and religion-state relations from any future amendment (Carter Center, 2014, pp. 80-1).

A related problem was a clash on the definition of individual freedoms, including the freedom of belief and conscience, and the state's role in protecting religion. Non-Islamists were in uproar after an article proposed by Ennahda in one of the earlier drafts sought to criminalize blasphemy. The controversy escalated and created a heated atmosphere involving popular protests following the screening of the film *Persepolis*, which was critical of Islam, and an art exhibition that showed a painting many deemed disrespectful to religion (Marks, 2014, pp. 24-5). Opposed to the criminalization of blasphemy, non-Islamists pushed to strengthen the language on freedom of belief, and sought to guarantee freedom of conscience.

Ennahda eventually backtracked on both issues. The resulting Article 6, which came into being gradually and emerged in its final shape only in January 2014, represents, as one deputy put it, “typical consensual article where you find everything”.<sup>147</sup> Reflecting secularist demands, it guarantees freedom of conscience and belief, free exercise of religious practice, and the neutrality of mosques and other places of worship from *partisan* instrumentalization, although not *political*, a more general term preferred by secularists.<sup>148</sup> It also forbids labelling another Muslim as a nonbeliever. On the other hand, it contains a vague formulation that the state is obligated to protect “the sacred”, despite the fact that this phrase would appear to contradict the rest of the article.<sup>149</sup>

---

<sup>147</sup> Author Interview with Selim Ben Abdessalam, 24 November 2016, Tunis.

<sup>148</sup> Author Interview with Selim Ben Abdessalam, 24 November 2016, Tunis.

<sup>149</sup> See Article 6 of the 2014 Constitution. ConstitutionNet, “The Constitution of the Tunisian Republic”, International IDEA, 26 January 2014, available at:



Finally, highlighted by all non-Islamist interviewees as being among the most important aspect of the constitution, was embedding the concept of the universality of human rights in the text and the reinforcement of women's rights: "Ennahda said they recognized international human rights standards, equality between men and women, if they are not in contradiction with Islam," explained an opposition NCA deputy, adding this stance was not acceptable.<sup>150</sup> Secularists also shared the perspective that the penultimate draft of the constitution in 2013 did not sufficiently preserve freedoms and women's rights.<sup>151</sup> Ennahda's deputies, however, claimed there were no real differences between the parties on those issues and that the opposition was taking the constitution hostage to score political points to take down the Ennahda-led government.<sup>152</sup>

The universality of human rights was indeed already inscribed in the preamble to the June 2013 draft, after a breakthrough was negotiated in spring during the first round of what was termed national dialogue.<sup>153</sup> That set it apart from the previous versions that spoke of "noble human values and the principles of human rights" and

---

[http://www.constitutionnet.org/sites/default/files/2014.01.26\\_-\\_final\\_constitution\\_english\\_idea\\_final.pdf](http://www.constitutionnet.org/sites/default/files/2014.01.26_-_final_constitution_english_idea_final.pdf) [accessed 21 August 2018].

<sup>150</sup> Author Interview with Selim Ben Abdessalam, 24 November 2016, Tunis.

<sup>151</sup> Author Interview with Mohamed Fadhel Mahfoudh, head of the Tunisian Order of Lawyers, one of the organizations that formed the Quartet essential to the brokering of the last phase of the national dialogue in autumn 2013. In Tunis, 14 December 2016.

<sup>152</sup> Author Interview with Ennahda's Latifa Habachi (25 November 2016, Tunis) and Amer Laarayedh (3 December 2016, Tunis).

<sup>153</sup> Several national dialogues were organized throughout the constitution-making process, as I discuss in Chapter 6. Apart from this instance of dialogue that developed in spring 2013, another important series of political negotiations that I refer to as the Quartet-led National Dialogue took place in autumn 2013.

did not mention the word “universal”.<sup>154</sup> Yet in the June draft the non-amendable principle that Islam was the religion of the state was hidden.<sup>155</sup> In the final phase of the constitutional negotiations that developed in the CC, secularist deputies, mistrustful of Ennahda’s intentions, sought to “announce clearly that Tunisia was a civil state based on universal [human] rights, and that Article 2 [on the civilian nature of the state] cannot be amended”.<sup>156</sup> The solution to the problem found in the CC was the phrase that Articles 1 and 2 could not be amended, along with the addition of the limitation clause, which allowed the state to restrict citizens’ rights only under conditions of necessity and proportionality. Secular-leaning opposition deputies also managed to tone down the religious language used in the text. With regard to women’s rights, deputies gradually introduced stronger language in consecutive constitutional drafts. Its proponents gained acceptance of the most progressive wording in January 2014 thanks to the formation of a women’s coalition which also involved Ennahda deputies.<sup>157</sup>

---

<sup>154</sup> See Preamble of the December 2012 draft. ConstitutionNet, “Draft Constitution of the Republic of Tunisia”, International IDEA, 14 December 2012, available at: [http://www.constitutionnet.org/sites/default/files/tunisian\\_constitution14\\_dec\\_2012-english-undp.pdf](http://www.constitutionnet.org/sites/default/files/tunisian_constitution14_dec_2012-english-undp.pdf) [accessed 21 August 2018]. See also an article by the Human Rights Watch for more details on the debate about the universality of human rights. HRW, “Tunisia: Strengthen new constitution’s human rights protection”, 3 January 2014, available at: <https://www.hrw.org/news/2014/01/03/tunisia-strengthen-new-constitutions-human-rights-protection> [accessed 21 August 2018].

<sup>155</sup> See Article 48 of the June 2013 draft. ConstitutionNet, “Draft Constitution of the Tunisian Republic”, International IDEA, 1 June 2013.

<sup>156</sup> Author Interview with Mouldi Riahi, 28 November 2016, Tunis.

<sup>157</sup> For more detail on this debate, see Kottoor, N., “Tunisia’s Ennahda and Ettakatol women MPs celebrate”, BBC News, 28 January 2014, available at: <https://www.bbc.com/news/world-africa-25916831> [accessed 21 August 2018].

### *Political System*

Another issue of major importance on which the political parties held diverging preferences was the political system to be adopted. On one side of the spectrum, Ennahda opted for a purely parliamentary system inspired by the United Kingdom, through which a president might be popularly elected but have only representative responsibilities. The party explained this preference by pointing to the years of one person rule.<sup>158</sup> They also realized the advantage of having built a true political party with ties to society, institutionalized intra-party decision-making mechanisms and internal coherence, something that other parties that filled the newly opened political space after the revolution sorely lacked.<sup>159</sup> In contrast, all the other parties desired a system that would balance the head of the government and an elected president. For their part, they pointed to the negative experience with the NCA, speaking about the dictatorship of parliament where Ennahda had most influence.<sup>160</sup> A more prosaic reason, and one frequently remarked upon by insiders among journalists, experts, and deputies themselves, was the presidential aspirations of leaders of these parties.

The relevant constituent commission did not manage to resolve the controversy. However, faced with the situation where everyone but Ennahda preferred something other than a parliamentary system, Ennahda settled on a “double system” where the powers of the head of the government and the president were “balanced”.

---

<sup>158</sup> Author Interviews with Ennahda’s deputies Latifa Habachi (25 November 2016, Tunis) and Amer Laarayedh (3 December 2016, Tunis).

<sup>159</sup> Author Interview with Habib Khedher, 25 November 2016, Tunis.

<sup>160</sup> Author Interviews with Salma Baccar (Al-Massar, 30 June 2014, Tunis), Ikbel Msadaa (CPR, 10 July 2014, Tunis), and Mongi Rahoui (WATAD, 2 July 2014, Tunis).

This came about during the spring 2013 phase of the national dialogue.<sup>161</sup> What followed was a thorough negotiation about every single prerogative within the CC during autumn 2013, with Ennahda's opponents seeking to enlarge the powers of any future president (Riahi, 2016, p. 52). Key Ennahda deputies told me those were the most difficult constitutional negotiations in which they were involved.<sup>162</sup> Both camps eventually considered the outcome a compromise in which the agreed system was significantly further away from a purely parliamentary one and the president gained some important prerogatives, especially in foreign affairs, defence and diplomacy, in line with the preferences of non-Islamists who still hoped to see his/her role enhanced further.<sup>163</sup>

Finally, towards the very end of the constitution-making process, the parties struck a bargain on withdrawing the upper limit on the age of the president and allowed presidential candidates to hold dual nationality. Both arrangements aimed to appease party leaders who sought to run in the forthcoming elections. The first agreement, on age limits, was initially opposed by Ennahda and its acceptance can be seen as the party giving a "green light" to the presidential candidature of Beji Caid Essebsi, the leader of Nidaa Tounes. Finally, the political parties held diverging preferences on the composition of the constitutional court, the final make up of which was a compromise

---

<sup>161</sup> "Final Communiqué of the sessions of National Dialogue" (translated from original Arabic), personal archive of Mouldi Riahi, 15 May 2013.

<sup>162</sup> Author Interviews Habib Khedher (Ennahda, 25 November 2016, Tunis), and Sabhi Atigue (Ennahda, 15 November 2016, Tunis).

<sup>163</sup> Author Interview with Lobna Jeribi, 23 November 2016, Tunis.

brokered in the CC and which determined the number of professional judges and non-judicial appointments to the court.<sup>164</sup>

### *Related Political Deals*

That constitutional agreement could be reached was difficult to imagine without the other political deals that turned out to be interlinked with constitutional negotiations. Some of them related to the problems raised by scholars of democratization in their specification of agreements on political institutions that I have outlined in the introduction to this chapter. This was especially the case in relation to the members of the former ruling party, the RCD, and their participation in political life. The parties of the Troika coalition, including Ennahda, favoured pushing through a draft law that they proposed in 2012, which lay down limits on the political activities of former-RCD members.<sup>165</sup> The law, however, faced opposition from Nidaa Tounes, which for the sake of its own members sought to weaken any such restrictions.<sup>166</sup> Ennahda's leadership began to alter their stance on the topic in mid-2013 and eventually rejected the law outright (Gobe, 2016, p. 80), despite it being "a huge point of controversy" within the party whose members suffered from repression before 2011.<sup>167</sup> Although

---

<sup>164</sup> Ennahda sought to increase the number of non-judicial experts in the constitutional court.

According to an opposition deputy, this was meant to place experts on sharia in the court. The final agreement was to have judges make up two thirds of the court, while one third would be drawn from those with other areas of expertise. Author Interview with Selim Ben Abdessalam, 23 November 2016, Tunis.

<sup>165</sup> Blaise, L., "La loi d'immunisation de la révolution votée à l'assemblée", Nawaat, 28 June 2013, available at: <https://nawaat.org/portail/2013/06/28/la-loi-dimmunisation-de-la-revolution-ou-la-difficulte-de-sortir-du-processus-revolutionnaire/> [accessed 21 August 2018].

<sup>166</sup> Author Interviews with Nidaa Tounes' members Selim Ben Abdessalam (24 November 2016, Tunis) and Ben Romdhane (8 December 2016, Tunis).

<sup>167</sup> Author Interview with Latifa Habachi, Ennahda, 25 November 2016, Tunis.

the party's general reasoning was that they did not want to "exclude anyone",<sup>168</sup> the sudden turn rather suggests the victory of pragmatism amid increasing tensions in the country and the growing opposition to Ennahda's government lead by the Nidaa (e.g. Gobe, 2016, p. 80; Preysing, 2015, pp. 126-7).

Another package of political deals which were negotiated during autumn 2013 was essential for attaining cross-partisan support on the constitution. This was the case following the resignation of the Ennahda-led government coalition, when a compromise on the head of the new caretaker government that was to replace the Troika and lead the country to the next elections had to be made. The deal also involved setting the date and sequence of the presidential and parliamentary elections, and the composition of the independent election-monitoring body, the ISIE. These issues were addressed during negotiations between political parties brokered by civil society organizations which I refer to as the Quartet-led National Dialogue (see Chapter 6). This dialogue overlapped with the discussions on the last contentious points in the constitution that took place in the CC. On the one hand, it responded to the demand of Ennahda's secularist opponents, which they made a condition of their return to the NCA from which they had withdrawn in July 2013. On the other hand, Ennahda was willing to resign from government only once the constitution was finalized by the NCA, the ISIE was established, and the election date set. If those conditions were not met simultaneously, it could, its deputies concluded, open the door for the return of dictatorship. They understood that finishing the constitution quickly, and with a level of high approval, was essential to the prevention of such a possibility. Additionally, putting ISIE in place and setting the election dates before the

---

<sup>168</sup> Author Interview with Latifa Habachi, Ennahda, 25 November 2016, Tunis.

constitution was finalized then guaranteed that, indeed, there would be free and transparent elections after they left office.<sup>169</sup> Compared to constitutional issues, these were more difficult for Ennahda to give up. According to a student of Ennahda, Marks (2014, p. 10), “the toughest debates inside the party and sharpest criticism of its leadership have come from Ennahda members upset not about sharia or classic so-called “Islamist” issues, but about the party’s seeming over-eagerness to compromise with figures of the old regime”.

The interconnection between these political deals and constitutional negotiations could be deduced from their timing. The NCA approved the list of ISIE’s members on 8 January 2014. The constitution, which contained Article 148 specifying that presidential and legislative elections were to take place before the end of 2014, was adopted at the end of the month, on 26 January. The new government of Mahdi Jomaa, who replaced Ennahda’s Ali Laraayedh, won the vote of confidence two days later, on 28 January.<sup>170</sup> “It was very connected. If the government didn’t obtain confidence, the constitution wouldn’t have been adopted, and vice versa. Everybody wanted to obtain their guarantees,” explained one of the key brokers of the negotiations.<sup>171</sup>

These agreements, and especially the resignation of the Ennahda-led coalition government and the participation of former regime elites in political life, were at the

---

<sup>169</sup> Author Interview with Latifa Habachi (25 November 2016, Tunis), and Habib Khedher (25 November 2016, Tunis).

<sup>170</sup> See the website of Al-Bawsala, which lists all the instances of voting in the NCA and their results. Marsad, “Votes sur la constitution”, Al-Bawsala, available at: <https://majles.marsad.tn/fr/votes> [accessed 21 August 2018].

<sup>171</sup> Author Interview with Abdessatar Ben Moussa, head of the Tunisian League for Human Rights. Tunis, 14 December 2016.

top of the agenda of Ennahda's main rival, Nidaa Tounes. In contrast, according to Selim Ben Abdessalem, who was a deputy for Nidaa Tounes in the NCA, Nidaa Tounes leader Beji Caid Essebsi was not particularly preoccupied with the constitution. As part of the constitution, the party sought to raise the age limit for presidential candidature and strengthen the power of the president, "because Beji Caid Essebsi was well-positioned to win the elections; but no more than that. For the rest, I never had a very deep discussion in Nidaa Tounes on the constitution".<sup>172</sup> Meanwhile, the finalization of a new constitution was highly important for Ennahda, which saw it as a critical means of maintaining political stability and a safeguard against the return of the old regime.<sup>173</sup>

#### 5.1.2 Summary

This section has deconstructed the agreement on the constitution, explored its key elements and their nature, as well as investigated whether, when and how the most divisive issues were settled. The constitutional agreement, symbolically, came together when the NCA approved the final draft in January 2014. Yet analysis shows this was only possible thanks to the resolution of individual contentious elements of the constitution over the two year period of constitutional negotiations. It also demonstrates that topics that created most controversy were not related exclusively to the design of macro-political institutions. This was most notably the case in the debates about religion-state relationships and on the universality of human rights.

---

<sup>172</sup> Author Interview, 23 November 2016, Tunis.

<sup>173</sup> Author Interview with Latifa Habachi (25 November 2016, Tunis) and Habib Khedher (25 November 2016, Tunis).



Understanding the sequence of the resolution of individual elements of the constitutional agreement is essential for assessing the role of inclusive constitution-making design in shaping them. The analysis shows that contrary to Ennahda's critics, the major Islamist party made key concessions throughout the process, and that parties in the anti-Ben Ali coalition consequently resolved many of the divisive issues before the 2013 summer crisis. One such example was the decision to forego the aspiration to include any reference to sharia while inscribing the civil nature of the state in the constitutional text. Ennahda had consented to these demands already in 2012 and April 2013, respectively. Questions on the universality of human rights, freedom of conscience, and the compromise on the mixed presidential-parliamentary system were then settled in spring 2013. However, if we compare the 2013 draft of the constitution and its final version from 2014, it is clear that secularist opposition parties, after the 2013 crisis, managed to turn the constitution even more to their liking. It was after July 2013 that those drafting the constitution strengthened any future presidents' prerogatives and erased the phrase that Islam was the religion of the state that had surreptitiously been placed near the end of the June 2013 penultimate draft. Secularist deputies made sure that the article that confirmed Tunisia as a civil state could not be amended in the future, even if there was a constitutional majority agreed on changing it. They also secured stronger language on the definition of human rights, while generally scaling down the religious terminology contained in the whole text.

The constitutional agreement, certified by the text approval of the NCA deputies, was interlinked with other political deals. The most vital was the agreement between Ennahda and its main rival, Nidaa Tounes, which cleared the way for the latter to compete in the forthcoming elections and provided guarantees for Ennahda that the NCA would complete the constitution-writing process. This arrangement

enabled the parties to overcome the 2013 political crisis and, ultimately, to solidify support for the constitution across the political spectrum. Both the testimonies from my interviewees and the timing of these deals suggest that they cannot be understood separately.

The Tunisian case further illustrates that what was vital for cementing an agreement on the constitution among the major political parties of the anti-authoritarian coalition was that they were able to adjust the text according to at least some of their preferences. At the end of the constitution-making process, everyone found a part of their vision included in the text and could claim the constitution as theirs. The strong agreement on the text of the constitution, even when that meant seeds were planted that paved the way for different possible interpretations of the text in the future, was especially crucial for secularists. Despite their initial electoral weakness and their fragmentation compared to Ennahda, they obtained guarantees in the form of the civil, that is not religious, nature of the state and limited role for Islam in the constitution, while also restricting Ennahda's control over the government. The question is, were secularists able to gradually win these concessions due to inclusive constitution-making design? Chapter 6, which assesses the formal and substantive inclusiveness of constitution-making design, will examine this question. Before that, the next section probes constitutional disagreement that developed in Egypt not long after the 25 January 2011 Revolution.

## **5.2 Constitutional Disagreement in Egypt**

Unlike Tunisia, the outcome of the five months of negotiations about the new constitution in Egypt's Constituent Assembly was disagreement on the document put up for the final vote. On 29 November 2012, CA deputies with predominantly Islamist

backgrounds, as others had withdrawn from the Assembly earlier that month, approved each article by a majority of votes. While the FJP and the Nour Party and its allies in the CA supported the constitution, non-Islamists of the anti-Mubarak coalition, now united in the National Salvation Front, dismissed it. The NSF refused to recognize the final draft, arguing that it did not “represent the Egyptian people”.<sup>174</sup> The coalition encouraged their supporters to vote “no” in the upcoming constitutional referendum and called for protests.<sup>175</sup> Demonstrations were held in Cairo and other cities in the days following. On 1 December, *Al-Jazeera* reported that tens of thousands had rallied in the capital’s downtown, chanting “Down with the Constituent Assembly!”<sup>176</sup>

Despite the controversies, 63.8 % of voters decided to approve the draft in a referendum with the first round being held two weeks after the CA finished the voting process. The referendum was marred by a low voter turnout, as only 32.9 % of registered voters cast ballots, 8 % less than in the previous referendum organized by the SCAF in March 2011.<sup>177</sup> This might have, however, reflected the electoral fatigue

---

<sup>174</sup> Spencer, R., “Egypt’s opposition rejects Mohammed Morsi compromise on constitution”, *The Telegraph*, 9 December 2012, available at:

<https://www.telegraph.co.uk/news/worldnews/africaandindianocean/egypt/9733466/Egypt-opposition-rejects-Mohammed-Morsi-compromise-on-constitution.html> [accessed 21 August 2018].

<sup>175</sup> Al-Arabiya, “Mursi, Brotherhood, Hijacking Egypt: National Salvation Front”, 9 December 2012, available at: <https://english.alarabiya.net/articles/2012/12/09/254213.html> [accessed 2 April 2018].

<sup>176</sup> Al-Jazeera, “Thousands rally in Cairo against constitution”, 1 December 2012, available at: <https://www.aljazeera.com/news/middleeast/2012/11/2012113016175317311.html> [accessed 21 August 2018].

<sup>177</sup> See Election Guide, “March 19, 2011, Arab Republic of Egypt referendum”, IFES, 19 March 2011, available at: <http://www.electionguide.org/elections/id/165/> [accessed 21 August 2018]; and Beaumont, P., “Mohamed Morsi signs Egypt new constitution law”, *Guardian*, 26 December 2012, available at: <https://www.theguardian.com/world/2012/dec/26/mohamed-morsi-egypt-constitution-law> [accessed 21 August 2018].

of voters, who had already cast votes in another referendum, elected two chambers of parliament and a president in two electoral rounds, and not just the ambivalence that surrounded the document. Nevertheless, the context of the constitution's adoption deepened the existing gap between the increasingly coherent camps organized along the religious cleavage line. The NSF continued to decline President Morsi's invitations for dialogue and offers of seats in the government, demanding that the President appoint a national unity government and take steps to amend the contested constitution (Dunne and Hamzawi, 2017, pp. 20-1).<sup>178</sup> As the head of the liberal FEP explained: "We were not collaborating with them in any way. The constitution was just a simple confirmation that the MB are not into any sort of inclusion, that they want to rule alone and that they want to exclude us."<sup>179</sup>

The absence of dialogue between the FJP-led government and the secularist opposition continued for another half a year, until summer 2013 (Dunne and Hamzawi, 2017, pp. 20-1). On 3 July 2013, when General Abdel Fatah El-Sisi, who served as Minister of Defence in Morsi's cabinet, cut the president's term short and announced that the 2012 Constitution was suspended, he enjoyed NSF members' support for his actions.<sup>180</sup> The Egyptian constitution change process manifested signs of "deep and continuous confrontation" with "no sign of accommodation" between the political parties of the anti-Mubarak coalition, and signified the lack of constitutional agreement. This overall disagreement reflected disaccord over a series of issues

---

<sup>178</sup> BBC, "Egypt opposition rejects Mohammed Morsi dialogue call", 28 January 2013, available at: <https://www.bbc.co.uk/news/world-africa-21234543> [accessed 21 August 2018].

<sup>179</sup> Author interview with Ahmed Said, 12 August 2014, Cairo.

<sup>180</sup> BBC, "Egyptian army suspends constitution", 3 July 2013, available at: <http://www.bbc.co.uk/news/av/world-middle-east-23174059/egyptian-army-suspends-constitution> [accessed 21 August 2018].

between the political parties relating to the text of the constitution, the constitution-making process, and wider political conflicts. I discuss these issues in more detail below.

#### 5.2.1 Disagreement in the Making

This section examines the disagreement on the constitution from December 2012. It explores whether this outcome reflected non-Islamists' disapproval of the text of the constitution or whether other problems played a part. It also considers the nature of the text-related disputes. To do this, I inquire into the motivations of the deputies who withdrew from the CA in November 2012, weeks before the CA voted on the constitution, based on their comments to the media. I also consult media reports on the debates in the CA between August and November 2012, and original qualitative interviews with members of the secularist camp, some of whom acted as CA deputies. A crucial input into the analysis of what were the most divisive issues during the constitutional debate were the reflections of constitutional specialists with local expertise.

The analysis shows that major splits that developed during the process of negotiating and drafting the constitution, pertaining to the question of religion-state relationships, the status and definition of Islamic sharia, and to a lesser extent to rights and freedoms, did not divide the major Islamist party, FJP, from the non-Islamist opposition. Instead, key contentions emerged, especially between secular-leaning parties on the one hand, and conservative Islamists of the Salafi persuasion, on the other. What did divide the FJP and secularists were conflicts about the procedural side of the constitution-making process. Further, constitutional disagreement was exacerbated by the wider political context.

*Understanding Non-Islamists Walkouts from November 2012*

The CA faced considerable criticism and a plethora of resignations throughout its term. It registered the most serious wave of walkouts, involving around one third of the deputies, in mid-November 2012. Their motivations, as captured by media coverage at the time, related primarily to the constitution-making process and its design. Non-Islamists demanded that the CA's vote on the final draft should be postponed from 19 November, as envisaged by the CA President, for three more months, in order to allow for further discussion of the contentious articles. They criticized the CA's composition, demanding that several of its members were replaced to make the drafting body "more representative".<sup>181</sup> They also disagreed with the narrow margin required for the approval of the constitution. Finally, non-Islamists, who left the CA in November, were dissatisfied with the way in which the debates were managed. This involved, especially, the controversial role of the Drafting Committee that was responsible for combining and adjusting the consecutive drafts, which they saw as controlled by people close to the FJP. Also criticized was the minor role played by the ad-hoc, Advisory Committee, composed of experts from outside the CA, whose role non-Islamists of the anti-Mubarak coalition wanted to see strengthened.<sup>182</sup>

---

<sup>181</sup> Shukrallah, S., "Brotherhood scrambles for consensus with opposition on draft constitution", Ahram Online, 6 November 2012, available at: <http://english.ahram.org.eg/NewsContent/1/140/57232/Egypt/The-Balance-Sheet/Brotherhood-scrambles-for-consensus-with-oppositio.aspx> [accessed 21 August 2018].

<sup>182</sup> See Ahram Online, "Leftist, liberal parties to announce final stance on constitution timeframe", 10 November 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/57693/Egypt/Politics-/Leftist,-liberal-parties-to-announce-final-stance-.aspx> [accessed 21 August 2018]; MENA and Ahram Online, "Liberal Wafd Party quits Egypt's constitution-drafting body", 17 November 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/58417/Egypt/Politics-/Liberal-Wafd-Party-quits-Egyptys-constitutiondrafti.aspx> [accessed 21 August 2018]; Ahram Online, "April 6 leader freezes

This does not mean, however, that what divided those drafting the constitution were only procedural considerations. Content-wise, two contradictory narratives emerged regarding the breadth of agreement on key articles of the constitution that had been reached by the time the number of withdrawals reached its height. After one of the meetings between political parties organized by the President, Morsi's cabinet reportedly claimed that the political groups had managed to agree on about 90 % of the draft constitution.<sup>183</sup> Two deputies coming from non-Islamist parties presented a similar perspective in my interviews. According to Mohamed Abdel Alim Dawoud, a deputy for the Wafd Party, by November 2012 there were no controversial issues related to the content of the constitution which could not be bridged.<sup>184</sup> Mohamed Mohi El-Din who represented the Ghad Al-Thawra (Revolution's Tomorrow) Party, argued that by mid-November 2012, "99 % of problems were already solved".<sup>185</sup> Others, however, remained more sceptical. In a statement cited by the *Ahram Online* newspaper, the group of deputies that had withdrawn complained that "they lost any hope that the draft constitution gains consensus of all political forces or reflects

---

membership of Constituent Assembly", 15 November 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/58254/Egypt/Politics-/April--leader-freezes-membership-of-Constituent-As.aspx> [accessed 21 August 2018]; El-Din, G.E., "The constitution-drafting assembly faces fatal threats", *Ahram Online*, 19 November 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/58539/Egypt/Politics-/The-constitutiondrafting-assembly-faces-fatal-thre.aspx> [accessed 21 August 2018].

<sup>183</sup> *Ahram Online*, "Morsi, political forces agree on 90% of the draft constitution: Spokesman", 4 November 2012, available at: <http://english.ahram.org.eg/NewsWorldCup/2018/57166.aspx> [accessed 21 August 2018].

<sup>184</sup> Author Interview, Cairo, 17 August 2014.

<sup>185</sup> Author Interview, Cairo, 10 August 2014. Ghad Al-Thawra is a liberal, non-Islamist party whose founder, Ayman Nour, formerly a member of the Wafd Party, ran in the 2005 presidential elections against Mubarak (Sallam, 2013, p. 131-2).

Egypt's aspirations for building a functioning civilian democracy".<sup>186</sup>

Based on the analysis of debates in the CA as represented in the media, supplemented by interviews with several CA deputies, it is possible to conclude that, as in Tunisia, divisions between those drafting the constitution centred on religion-related articles. Still, it initially seemed as if the debate about the incorporation of sharia in the constitution's text had not stirred much emotion. Egyptian society was seen as more conservative than the Tunisian one, and the 1971 Constitution mirrored this tendency (Masoud, 2014, pp. 133-42). Under President Sadat in 1980, an amendment to Article 2 of the constitution replaced milder wording that principles of sharia were "*a* main source of legislation" with "*the* main source of legislation," giving sharia's principles, at least on paper, a more important role. Matters of personal status, including issues such as marriage, divorce, and inheritance were very much shaped by principles of sharia (Brown, 2012a). As a liberal politician, Amr Hamzawy, put it, prior to the revolution, the "unspoken consensus" on Article 2 was that it was not an important political problem for either the MB or secularists.<sup>187</sup> Reviewing the 2011 electoral platforms of non-Islamist parties, Masoud (2014, p. 140) showed that the Wafd Party, FEP, and even the leftist National Progressive Unionist Party (known as Tagammu) embraced the wording of Article 2 of the 1980 Constitution. This indicates that early into the transition, the consensus was still holding.

Nevertheless, cracks in this position began to appear after the January 2011 revolution. On the one hand, some among the liberals and leftists sought to diminish the role of sharia. Salafists, on the other, wanted to tweak the previously vague

---

<sup>186</sup> El-Din, G.E., "The constitution-drafting assembly faces fatal threats", *Ahram Online*, 19 November 2012.

<sup>187</sup> Author Interview, Prague, 8 October 2017.



wording of Article 2 or to add to it, hoping to stop the practice whereby the legislative accord with sharia was guaranteed by the constitution but the application of this principle was limited by its interpretation by the courts (Al-Ali, 2012; Lombardi and Brown, 2012; Brown, 2012a).<sup>188</sup> The pressure exerted, especially by Salafists, suggested that the status quo on Article 2 was increasingly difficult to maintain: “We collectively invented that debate [on sharia]”, commented Hamzawy and “...once you invent it, you’ve got to position yourself, and the positioning led to radical arguments. And, so, the Article 2 was no longer out of discussion... [The] unspoken consensus on ‘let the Article 2 be as it is’ was shattered away”.<sup>189</sup>

According to experts on constitutional law and Egyptian politics, Lombardi and Brown (2012), the newly added Article 219 which stirred controversy, as it specified what the principles of sharia meant, emerged as a by-product of the previous unsuccessful efforts by Salafists and non-Islamists to amend the wording of Article 2. The authors saw the final outcome as an “odd compromise” between Salafists and non-Islamists. It consisted of keeping Article 2 unchanged and adding Article 219. In addition, another article gave the scholars from Al-Azhar, the state-controlled religious authority, a vaguely defined role in interpreting “matters related to Islamic Sharia”. Salafists, unhappy with the interpretation of sharia by courts, were content that Article 2 was defined. Non-Islamists, meanwhile, “had to content themselves that if the Islamic Sharia’s principles were being defined, at least they were not being handed to Salafis” in terms of following their preferred interpretation (Lombardi and

---

<sup>188</sup> See Sabry, B., “Fight club: A concise guide to the controversies over Egypt’s new constitution”, *Ahram Online*, 31 July 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/49044/Egypt/Politics-/Fight-club-A-concise-guide-to-the-controversies-ov.aspx> [accessed 21 August 2018].

<sup>189</sup> Author Interview with Amr Hamzawy, 8 October 2017, Prague.

Brown, 2012). In line with this narrative, a deputy for the secular-leaning Wafd Party told me that non-Islamists and even delegates representing the Church in the CA agreed with the solution, which remained problematic especially for Salafists.<sup>190</sup> In contrast, Amr Hamzawy who had previously withdrawn from the Assembly argued that non-Islamists were “trying up to the very end to get the Article 219 out, but it was too late”, adding that “once you get 219, there was no consensus anymore, and so the process exploded”.<sup>191</sup> The extent to which these articles were problematic to different parties and individual politicians coming from the heterogeneous non-Islamist camp, therefore, remains an open question.

In either case, it appears that in the disagreement about the role, and interpretation, of sharia, which simmered especially between non-Islamists and Salafist deputies, the FJP played a marginal role. The party initially sided with non-Islamists, preferring to retain the wording of Article 2 as stipulated in the old constitution and did not wish to add to it.<sup>192</sup> Information that we have about the negotiations in the CA, and from qualitative interviews, leave us with the impression that the FJP was keen to compromise on the text of the constitution. It is also clear that it was willing to mediate between the antagonistic camps of the Salafists and non-Islamists.<sup>193</sup>

---

<sup>190</sup> Author Interview with Mohamed Abdel Alim Dawoud, 17 August 2014, Cairo.

<sup>191</sup> Author Interview with Amr Hamzawi, Prague, 8 October 2017.

<sup>192</sup> Author Interview with Amr Hamzawi, Prague, 8 October 2017. See also El-Din, G.E., “Debate intensifies over fundamental rights and freedoms in Egypt new constitution”, *Ahram Online*, 1 September 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/51711/Egypt/Politics-/Debate-intensifies-over-fundamental-rights-and-fre.aspx> [accessed 21 August 2018].

<sup>193</sup> Author Interviews with Mohamed Abdel Alim Dawoud (17 August 2014, Cairo) and Mohamed Mohi El-Din (10 August 2014, Cairo). See also Sabry, B., “Fight club: A concise guide to the controversies over Egypt’s new constitution”, *Ahram Online*, 31 July 2012; Shukrallah, S., “Brotherhood scrambles for consensus with opposition on draft constitution”, *Ahram Online*, 6

The FJP's pragmatism was most probably driven by the motivation to have the constitution adopted as soon as possible in order to minimize the period of uncertainty during transition. The party initially promised that the constitution would be finalized before the presidential elections to prevent the scenario, feared by their opponents, that a new president would be elected without clearly-defined boundaries to his powers. They also had to take into consideration the interim constitutional framework defined by the Constitutional Declaration that the SCAF had fashioned in March 2011, which required the constitution to be adopted within six months following the CA's selection.<sup>194</sup> Perhaps the most pressing issue for the FJP was the need to respond to the legal controversy that over shadowed the very existence of the CA. The Supreme Administrative Court, which had continued to postpone its final verdict since June 2012, could have decided, at any time, to cut the Assembly's term short. The same court had suspended the first Constituent Assembly in April 2012, as I will discuss in Chapter 6. This haste is apparent in President Morsi's statement from November 2012: "We don't have a parliament now... We don't have a constitution now. That [situation is] urging us, pushing people to finish this but in some sort of stable climate and situation so people can go and vote on the constitution. We want to finish it".<sup>195</sup> Leading FJP's members maintained that remaining differences could be settled by the

---

November 2012; and El-Din, G.E., "Salafis and liberals exchange fire over Egypt's draft constitution", Ahram Online, 22 October 2012, available at:

<http://english.ahram.org.eg/NewsWorldCup/2018/56275.aspx> [accessed 21 August 2018].

<sup>194</sup> ConstitutionNet, "The 2011 Constitutional Declaration", International IDEA, available at: [http://www.constitutionnet.org/sites/default/files/march\\_2011-egypt\\_interim\\_constitution-english.pdf](http://www.constitutionnet.org/sites/default/files/march_2011-egypt_interim_constitution-english.pdf) [accessed 21 August 2018].

<sup>195</sup> Stengel, R., B. Ghosh and K. Vick, "Transcript: TIME's interview with Egyptian President Mohamed Morsi", TIME, 28 November 2012, available at: <http://world.time.com/2012/11/28/transcript-times-interview-with-egyptian-president-mohamed-morsi/> [accessed 21 August 2018].

new parliament once the constitution was formally adopted.<sup>196</sup> As Lombardi and Brown (2012) aptly put it: “Brotherhood members in the Constituent Assembly focused... on simply getting a text – any text – in front of the voters.”

Apart from religion-related articles, divisions revolved particularly around rights and freedoms, and women’s rights which non-Islamists wanted to see strengthened.<sup>197</sup> The fact that these elements of the constitution were not adjusted to accommodate the preferences of non-Islamists figured in their justifications of their withdrawal from the CA in November 2012, and their disapproval of the constitution overall.

In contrast, articles pertaining to the form of the government seem to have proved less problematic. According to experts, available media coverage, and qualitative interviews, the forces of the anti-Mubarak coalition converged on curbing the powers of the president and establishing a semi-presidential system (Auf, 2012; Al-Ali, 2012).<sup>198</sup> For example, writing in September 2012, two months before the adoption of the constitution, Egyptian constitutional expert, Auf (2012), was perplexed by the consensus among Egyptian politicians, including the CA members,

---

<sup>196</sup> This is obvious from the talk of Amr Darrag, Secretary-General of the CA, at a roundtable organized by the Brookings Doha Center on 14 November 2012. See Brookings, “Drafting the Constitution: Defining Post-Revolutionary Egypt”, Brookings Doha Center, 14 November 2012, available at: <https://www.brookings.edu/events/drafting-the-constitution-defining-post-revolutionary-egypt/> [accessed 21 August 2018].

<sup>197</sup> El-Din, G.E., “Islamist-liberal cold war over Egypt’s constitution contained but not over”, Ahram Online, 5 October 2012, available at: <http://english.ahram.org.eg/NewsWorldCup/2018/54817.aspx> [accessed 21 August 2018].

<sup>198</sup> Author Interview with Amr Hamzawy, Prague, 8 October 2017. See also El-Din, G.E., “Fierce debates plague final drafts of Egypt’s constitution”, Ahram Online, 20 August 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/50821/Egypt/Politics-/Fierce-debates-plague-final-drafts-of-Egypt-const.aspx> [accessed 21 August 2018].

to “implement a mixed presidential-parliamentarian system of government”, which he, an opponent of a mixed system, saw as misguided. While there remained differences among individual members of the political parties on the concrete stipulations, such as the president’s prerogative to appoint judges, these issues were not identified by the deputies as being motivating factors for leaving the body tasked with drafting the constitution (Revkin and Auf, 2012, pp.5-6).<sup>199</sup>

### *Final Rupture: Constitutional Declaration*

While the November withdrawals provided a backdrop to disruption, the actual “torpedo” that, as one of my interviewees expressed it, undermined the agreement on the constitution was the controversial Constitutional Declaration produced by President Morsi on 22 November 2012.<sup>200</sup> The declaration was, more than likely, a reaction to the political situation in which the boycott by the non-Islamists of the CA, combined with the anticipated court ruling against the drafting body, posed a serious threat to its existence.<sup>201</sup> The document allowed Morsi to replace the public prosecutor, widely criticized for failing to win cases against Hosni Mubarak and his cronies, and to order their retrials. More importantly, it postponed by two months the deadline by which the CA should come up with a completed constitution, as demanded by the

---

<sup>199</sup> See also El-Din, G.E., “Salafis and liberals exchange fire over Egypt’s draft constitution”, *Ahram Online*, 22 October 2012.

<sup>200</sup> Author Interview with Amr Hamzawy, Prague, 8 October 2017.

<sup>201</sup> Blair, E., P. Taylor, and T. Perry, “Special report: How the Muslim Brotherhood really lost Egypt”, *Reuters*, 25 July 2013, available at: <https://www.reuters.com/article/us-egypt-mistakes-specialreport/special-report-how-the-muslim-brotherhood-lost-egypt-idUSBRE96O07H20130725> [accessed 14 September 2018].

deputies who had withdrawn.<sup>202</sup> The real sticking point from its critic's perspective, however, was that it immunized the constitutional process from judicial review, in effect granting the president, who already possessed both legislative and executive prerogatives, powers over the courts (Brown, 2013a, p. 9).<sup>203</sup>

FJP's secular opponents in the anti-authoritarian coalition viewed the declaration as "totalitarian", arguing its release represented a turning point in the production of the constitution and ultimately the transition process.<sup>204</sup> Had Morsi not issued the controversial declaration, claimed a deputy for the liberal Wafd Party, his, and other parties, might have returned to the CA. However, it was impossible to ignore because the document "gave all powers to the president", undermining "any efforts to establish democracy".<sup>205</sup> The declaration provided the fiercer critics among the FJP's opponents with an excuse "to interrupt all the constitutional process" where Islamists controlled the majority.<sup>206</sup> It was also an opportunity to resolve to an open confrontation with the ruling party and its unpopular president ahead of the

---

<sup>202</sup> Kirkpatrick, D.D., and El Sheikh, M., "President Morsi in Egypt Seizes New Powers", New York Times, 22 November 2012, available at:

<http://www.nytimes.com/2012/11/23/world/middleeast/egypts-president-morsi-gives-himself-new-powers.html> [accessed 21 August 2018].

<sup>203</sup> The decree stated that "previous constitutional declarations, laws, and decrees made by the president since he took office on 30 June 2012, until the constitution is approved and a new People's Assembly [lower house of parliament] is elected, are final and binding and cannot be appealed by any way or to any entity. Nor shall they be suspended or cancelled and all lawsuits related to them and brought before any judicial body against these decisions are annulled." See Ahram Online, "English text of Morsi's Constitutional Declaration", 22 November 2012, available at:

<http://english.ahram.org.eg/NewsContent/1/64/58947/Egypt/Politics-/English-text-of-Morsis-Constitutional-Declaration-.aspx> [accessed 21 August 2018].

<sup>204</sup> Author Interview with Mohamed Abdel Alim Dawoud, 17 August 2014, Cairo.

<sup>205</sup> Author Interview with Mohamed Abdel Alim Dawoud, 17 August 2014, Cairo.

<sup>206</sup> Author Interview with Mohamed Mohi El-Din, 10 August 2014, Cairo.

parliamentary elections that were supposed to follow the adoption of the constitution. As the leader of the liberal FEP, the party that withdrew from the CA early on, put it: “I think the decree helped us a lot. (...) You can’t just boycott them for no reason.”<sup>207</sup>

The declaration was the final straw that definitively ended all prospects for a continuation of constitutional negotiations and, ultimately, for agreement. Wary of the potential ruling against the CA and motivated not to prolong the transition any further, the FJP moved to finish the constitution in spite of the absence of non-Islamists. Neither the fact that Morsi quickly renounced the declaration after being confronted with large popular protests, nor the promise to adjust the text of the constitution after its approval, appeased the FJP’s adversaries (Dunne and Hamzawi, 2017, pp. 20-1). Non-Islamists of the anti-Mubarak coalition took Morsi’s declaration as final proof that it was impossible to negotiate with the FJP,<sup>208</sup> and used the occasion to delegitimize the controversial constitution-making process as well as its product. However, while “one ‘last straw’ may be necessary to break a camel’s back”, it might not “contribute as much to the outcome as the bales of straw that preceded it” (George and Bennett, 2004, p. 27). We should, therefore, not overstate the impact that the declaration, of itself, had on producing the overall disagreement, which also came about because of procedural and content-related conflicts between parties of the anti-Mubarak coalition.

### 5.2.2 Summary

Analysis revealed how the overall constitutional disagreement in Egypt, which manifested itself most tangibly during the popular referendum on the constitution in

---

<sup>207</sup> Author Interview with Ahmed Said, 12 August 2014, Cairo.

<sup>208</sup> Author Interview with Ahmed Said, 12 August 2014, Cairo.

December 2012, came into being. The major differences between those drafting the constitution from across parties of the anti-Mubarak coalition did not stem from different views as to the form of new macro-political institutions but, rather, as in Tunisia, revolved around the role of religion in the constitutional order and the principles of sharia and its interpretation, as well as around rights and freedoms, and women's rights. These issues opened a schism, not so much between the FJP and non-Islamist parties of the coalition, but by putting non-Islamist parties and conservative Islamists of the Salafi current, whose preferences for the constitution were more diametrically opposed, at odds with each other. While there were, certainly, differences between the FJP and non-Islamists, it seems that these were not insurmountable, thanks partially to FJP pragmatism.

What, however, did divide the FJP and secularists was the design of the constitution-making process. Among the motivations identified by deputies who resigned their CA membership in November 2012 were serious complaints about the CA's composition, which was seen as unrepresentative because of the Islamists majority. Non-Islamists also disputed the narrow margin needed to approve the constitution, the role of the special committees, and the CA's tight deadline for finalizing the constitution. These issues might have been resolved were it not for the political context. The combination of the first CA and the lower chamber of Parliament both having been recently dissolved, the possibility that the Supreme Administrative Court would dissolve the second CA, an action that it was actively considering, and SCAF's continuing direct involvement in politics, all likely led to a situation in which the FJP concluded that its best course was to conclude the constitution-making process as speedily as possible. This, in turn, meant ignoring their opponents' demands. Despite, perhaps, not being politically sophisticated, it is against this



backdrop that the release of Morsi's controversial Constitutional Declaration, which undermined the prospects for constitutional agreement, should be understood.

### **5.3 Conclusion**

This chapter has probed the two different outcomes of constitution change processes that were underway in Egypt and Tunisia following the popular protests that ousted Presidents Mubarak and Ben Ali in 2011. In Tunisia, on the one hand, the constitution-making process that began with the popular election of the National Constituent Assembly in October 2011, concluded in January 2014 with agreement on the new constitution by parties across the anti-Ben Ali coalition, both secularist and Islamist. On the other hand, when the Constituent Assembly approved the new charter in Egypt in November 2012, five months after the process started in June of the same year, it faced vigorous opposition from non-Islamist parties of the anti-Mubarak coalition who had previously left the drafting body in protest. The approach taken by this thesis is that we should understand these overall (dis)agreements not as one-off moments, but as composed of the individual contentious issues.

The empirical analysis demonstrated that, in both cases, the elements of the constitutions that proved most difficult upon which to reach a consensus related to religion-state relationships and the status, and in Egypt also the interpretation, of Islamic sharia. Another difficult aspect of the new charters were articles pertaining to rights and freedoms, and women's rights in particular. It is difficult to assess whether divisions on these issues were more prevalent in Egypt. Even though protagonists of constitutional change tackled similar problems, their understanding of these issues differed simply because negotiations about them developed within different cultural, political, and historical contexts. This point could be seen in the debate about sharia,

where those drafting in the two countries faced different starting points. In Egypt, sharia was already part of the constitutional order before the revolution and secularists and Islamists initially agreed it should remain so. In contrast, sharia was not specifically mentioned in the previous Tunisian charter, and when some of Ennahda's deputies sought to change the status quo, they faced outrage from non-Islamist parties and civil society in general. What can be said is that these issues were among the most important and, at the same time, proved difficult to negotiate in both the countries. In addition, while in Tunisia drafters also struggled to agree on the configuration of executive-legislative relations, this issue caused surprisingly little trouble in Egypt. Contrary to the democratization literature that anticipates the development of conflicts, especially regarding the design of macro-political institutions of the new regime, this chapter shows that in countries divided along a religious line, identity and religion-related aspects of the constitution can lead to as many, if not more, conflicts.

In Egypt, as in Tunisia, struggles over the content of the constitution, along with other problems, led non-Islamist parties to leave the main constitution-making bodies. However, in Tunisia, smaller secularist parties returned to the NCA in autumn 2013 as they were given more say over the text, and they were able to increasingly amend it to reflect their preferences. Their counterparts in Egypt were less successful in this regard. This was partially because of the wider political context, and partially because conservative Salafist parties were able to polarize the discussions about the constitution, while conservative Islamist forces in the Tunisian NCA remained marginal players in the process.

Finally, this chapter shows that constitution-making processes and constitutional agreement cannot be seen in isolation. The wide nature of the approval of the constitution by the Tunisian NCA was interlinked with the package of deals that

involved the resignation of the Ennahda-led government, the timing and the sequence of the subsequent legislative and presidential polls, and election of members to the independent election-monitoring committee. In Egypt, constitution-making process that developed in the CA was affected by the controversial Constitutional Declaration produced by President Morsi in November 2012. These examples remind us that constitution-making is only one area of contest between rival political parties during democratization, and that constitutional change progresses against a backdrop of wider struggles over political power.

The next chapter, Chapter 6, explores constitution-making design and its inclusivity. It addresses the question of whether inclusive design can foster constitutional agreement, and whether it can help to explain the different outcomes from the constitutional change process that we have explored in Egypt and Tunisia.

## **Constitution-making Design and Inclusiveness**

How inclusive were the constitution-making designs that guided the writing of the new constitutions in Tunisia and Egypt after the 2010/11 uprisings? Did the processes guarantee that all the important political parties of the anti-authoritarian coalitions were present at the negotiation table? What influence did parties across the coalition have on shaping the text of the constitution? Did the design of the constitution-making processes facilitate the sharing and spread of power of an individual party over the content or, conversely, did it make it easy for the stronger Islamist parties to have things their own way? In Chapter 1, I showed that the principle of inclusiveness has featured among the “best practices” recommended globally in constitution-making by international organizations involved in the promotion of democracy and peace-building. It has also received attention by observers of constitution change processes in Egypt and Tunisia, and by local politicians, who saw inclusiveness as a key to the adoption of widely accepted constitutions after the revolutions that ousted authoritarian Presidents Ben Ali and Mubarak. We have seen in the previous chapter (Chapter 5) that while the charter approved by the Tunisian National Constituent Assembly in January 2014 was embraced by both Ennahda and secular-leaning opposition parties, the document adopted by the Egyptian Constituent Assembly in November 2012 only exacerbated polarization along religious lines. This chapter assesses the design of constitution-making processes in Egypt and Tunisia, and asks whether variance in their levels of inclusivity could have accounted for the different outcomes.

The chapter first identifies the main formal and informal channels where constitutional negotiations took place. It measures their formal and substantive inclusivity across three stages of constitution-making: convening, debating, and approval. In contrast to formal inclusiveness, which accounts merely for the party's membership in the constitution-making channel, the degree of substantive inclusiveness depends on the party's capacity to impact on the constitution. Of course, not all parties of the anti-authoritarian coalition were in the same position to shape the text. Some of them attracted more electoral support than others. Constitution-making design might not guarantee that all parties would shape the constitution to an equal extent. However, a design that promotes substantive inclusion would aspire to protect the interests of even weaker players, and to prevent a situation in which a "temporary majority" could push through its preferred text against the agreement of a minority (see Chapter 3).

In considering the convening stage of constitution-making process, the question is asked within this chapter whether the number of seats that parties were assigned in the constitution-making channels was proportional to their electoral popularity, and whether or not smaller parties were significantly underrepresented, or conversely the larger parties overrepresented. Moving on to the debating stage, it investigates the internal organization of the constituent assemblies, assessing whether it helped to strengthen the voice of smaller parties in negotiations, or suppressed their influence. Finally, at the approval stage, I ask and answer the question whether the size of the majority required for passing the entire constitution was larger than a simple majority, 50% plus one, and whether weaker parties could rely on safeguarding mechanisms such as a referendum. In addition, gauging perceived inclusivity, the chapter investigates how parties themselves viewed constitution-making design.

The chapter begins with discussion of the Tunisian case followed by that of Egypt, and closes by drawing comparisons. It finds that while the designs put in place in Egypt and Tunisia were formally inclusive, bringing all the important parties of the anti-authoritarian coalitions to the negotiation table, they differed in the extent to which they promoted substantive inclusion. The Tunisians began the process not only with a considerable substantively inclusive design, but they also altered the design during the last phase of the process, granting smaller parties a significant influence over the text. In contrast, in Egypt, the ability of smaller parties to shape the constitution was hindered, primarily by the low majority necessary to adopt the constitution. These differences in inclusiveness encouraged compromise in Tunisia, while making it easier for stronger Islamist parties in Egypt to approve the new charter against the will of weaker non-Islamists. Finally, the chapter shows that although formal inclusion can potentially have a positive impact on the process of agreeing on the new constitution, what parties really seek, and what their conflicts are about, is the ability to influence the text.

### **6.1 Increasingly Inclusive Constitution-making Design in Tunisia**

The constitution-making design followed by those drafting the document in Tunisia was formally and substantively inclusive, and changes to the design later in the processes further boosted the ability of smaller, secularist parties to shape the constitution. Below, I outline the main constitution-making channels, which creates a basis for a more detailed analysis of constitution-making design inclusiveness, which I undertake next. The NCA was elected in popular polls in October 2011. This was nine months after President Ben Ali flew to Saudi Arabia following mounting public unrest that had been sparked in December 2010 by the death of Tarak Bouazizi, a

street vendor from the country's impoverished interior. The debates on the constitution were then launched in February 2012, after NCA deputies adopted rules of procedure which organized their work. A closer look reveals that even though the NCA maintained a tight grip over the production of the constitution, negotiations proceeded through a variety of formal and informal channels that emerged both from within and outside of the Assembly's scope.

#### 6.1.1 Main Constitution-making Channels

This section tracks those constitution-making channels throughout the constitution change process that developed between 2011 and 2014, and explains their role and the context in which they emerged. It also highlights what key individual agreements, which I identified in Chapter 5 as building blocks of the overall constitutional agreement, were reached in these venues. The analysis draws on qualitative interviews, reports on the constitution-making process produced by international organizations, especially the Carter Center and the UNDP, and secondary literature.

##### *Constituent Commissions*

The major arena for constitutional negotiations between February 2012 and April 2013, established from within the NCA, were constituent commissions. It was there that the deputies from different parties discussed the details of constitutional provisions, consulted experts, dealt with disagreements, and voted to pass the wording of articles that the majority of the members of the commission favoured. Each of the six commissions covered one of the core sections of the constitution: (1) rights and freedoms; (2) legislative and executive powers and the relationship between them; (3) preamble, fundamental principles and constitutional review; (4) regional and local

public authorities; (5) constitutional bodies; and, finally, (6) judicial, administrative, financial and constitutional justice.<sup>209</sup> The plan was that the individual sections produced by the commissions would then be combined into one draft by a coordinating body, the Joint Drafting Committee (JDC), before being presented to the whole Assembly for additional changes and ultimate approval. The membership of the 22-member commissions was allocated to parliamentary blocs and independents in proportion to their share of NCA seats.<sup>210</sup> The only exception to this rule seems, on first inspection, to be Aridha Chaabia, which with 12 % of seats in the NCA claimed only 4.5 % of members in each commission. However, by this point the party had started to crumble and its members were crossing the floor to join other parties or blocs, or sitting as independents. This drain led to the marginalization of the party (Chapter 4). The leadership of each commission was assigned based on relative weighting of each bloc.<sup>211</sup> This meant that Ennahda, who had been the victors in the 2011 elections, maintained a leading position at the commission level (see Table 4).

---

<sup>209</sup> See Marsad, “L’Assemblée”, Al-Bawsala, available at:

<https://majles.marsad.tn/fr/assemblee/commissions> [accessed 23 August 2018].

<sup>210</sup> See Article 42 of the NCA Rules of Procedure. ConstitutionNet, “The Tunisian National Constituent Assembly. Rules of Procedure”, International IDEA, 16 December 2011, available at:

[http://www.constitutionnet.org/sites/default/files/constituent\\_assembly\\_rules\\_of\\_procedure\\_-\\_english-final.pdf](http://www.constitutionnet.org/sites/default/files/constituent_assembly_rules_of_procedure_-_english-final.pdf) [accessed 27 August 2018].

<sup>211</sup> The leadership positions in the six commissions included: Chair, Vice-Chair, Rapporteur, and two Assistant Rapporteurs. For instance, Ennahda nominated three of the Chairs of the 22-member commissions, the same number as the CPR, Ettakatol, and the opposition Democratic Bloc combined. See Bsili, A., “Beginning and organization of the work of the constituent committees”, UNDP, Constitution in Tunisia, Part 2, 26 September 2016, available at:

<http://www.arabstates.undp.org/content/dam/rbas/doc/Compendium%20English/Part%202/12%20Adel%20Bsili%20EN.pdf> [accessed 17 August 2018].



Parliamentary bloc (individual parties are in italic)	Seats in NCA (February 2012)		Constituent commissions seats (February 2012)		JDC seats (February 2012)		CC seats (June 2013)	
	Number	%	Number	%	Number	%	Numbers	%
<i>Ennahda</i>	89	41	9	40.9	7	43.8	5+1**	26
Democratic Bloc	30	13.8	3	13.6	2	12.5	3	13
<i>CPR</i>	29	13.4	3	13.6	4	25	2	8.7
<i>Ettakatol</i>	22	9.2	2	9.1	2	12.5	2+1***	13
Freedom and democracy	13	5.9	1	4.5	-	-	-	-
Freedom and dignity	12	5.5	1	4.5	-	-	2	8.7
<i>Aridha</i>	26	12	1****	4.5	-	-	1	4.3
<i>Chaabia</i>								
Independents (no bloc)	11	5	1	4.5	1	6.25	1	4.3
<i>Al-Wafa</i>	-	-	-	-	-	-	1	4.3
<i>PF</i>	-	-	-	-	-	-	1	4.3
<i>Democratic Alliance</i>	-	-	-	-	-	-	1	4.3
<i>Nidaa Tounes</i>	-	-	-	-	-	-	1	4.3
<i>Movement for the Republic</i>	-	-	-	-	-	-	1	4.3
<b>Total</b>	<b>217</b>		<b>22</b>		<b>16</b>		<b>23</b>	

**Table 4. Distribution of seats in the main constitution-making channels in Tunisia\***

Source: Brownlee et al. (2015, pp. 140-1); Carter Center (2014, pp. 32-3, p.47); Marsad (n.d.).

\* The distribution of seats among parties at constituent commissions is accurate as for the time of the commissions' creation – since some of their members changed their party allegiance, the picture might have changed slightly.

\*\* In addition to 5 Ennahda members, the CC included the General Rapporteur of the constitution, Ennahda's Habib Khedher. The percentage in the next column is calculated with taking Khedher into account.

\*\*\* Apart from 2 Ettakatol members, the CC was headed by the NCA President, Mustapha Ben Jaafar from Ettakatol. The percentage in the next column is counted with taking Ben Jaafar into account.

\*\*\*\* After a number of resignations took place in November 2011 and hence before the constituent commissions were formed, Aridha Chaabia's number of deputies went down from 26 to 14, and the proportion of commission members it received thus reflected this shift.

### *Spring 2013 Phase of the National Dialogue*

In April 2013, one year and a half after the elections, pressures were mounting on the NCA to conclude its work. While the Assembly was not legally bound to produce the constitution by a specific date, Ennahda's opponents lost no opportunity to remind the

government about a “gentlemen’s agreement” among political parties from September 2011, in which they agreed to restrict the lifespan of the NCA to one year.<sup>212</sup> The head of the opposition Democratic Bloc, Mohammed Al-Hamdi, expressed the view that, “The legitimacy of the Assembly was challenged once the first year of its term had ended.”<sup>213</sup> Behind this statement lay the fear felt by some opponents of the government that the interim period would be gradually prolonged, with the government unwilling to cede power.<sup>214</sup> That the political divide between Islamists and their secular opponents was growing was exemplified in the formation of Nidaa Tounes, a party project which sought to unite secular forces to counterbalance Ennahda.

The worsening security situation added to the overall complexity of the negotiations. The second half of 2012 saw an activist from Nidaa Tounes killed during a clash with followers of the League for the Protection of the Revolution (LPR) and the latter’s conflict with members of the Tunisian labour union, UGTT.<sup>215</sup> LPR members formed increasingly militant neighbourhood organizations during the revolution to fill the security vacuum, and which were generally suspected by the opposition to have links to Ennahda (Gobe and Chouikha, 2014, p. 2). Tensions

---

<sup>212</sup> Essebsi, B.C. “Tunisie. Béji Caïd Essebsi monte au créneau et appelle à rectifier le tir”, Global Net, 26 January 2012, available at: <http://www.gnet.tn/temps-fort/tunisie-beji-caid-essebsi-monte-au-creneau-et-appelle-a-rectifier-le-tir/id-menu-325.html> [accessed 27 August 2018].

<sup>213</sup> See El-Hamdi, M., “Dissolving tensions between the groups and resuming the work of the Constituent Assembly. The Transitional experiment in Tunisia: between conflict and agreement”, UNDP, Constitution in Tunisia, Part 2, 26 September 2016, available at: <http://www.arabstates.undp.org/content/dam/rbas/doc/Compendium%20English/Part%202/24%20Mohamed%20El%20Hamdi%20EN.pdf> [accessed 27 August 2018].

<sup>214</sup> Author Interview with Mohamed Fadhel Mahfoudh, head of the Tunisian Order of Lawyers. Tunis, 15 December 2016.

<sup>215</sup> Reuters Staff, “Secular politician killed in southern Tunisia clashes”, Reuters, 18 October 2012, available at: <https://af.reuters.com/article/commoditiesNews/idAFL5E8LIN9E20121018> [accessed 27 August 2018].

reached a peak when a vocal leftist figure, Chokri Belaid, was assassinated by unknown assailants in February 2013.<sup>216</sup> Faced with protests and criticism, Ennahda and its coalition partners reshuffled the cabinet and offered several key ministerial positions to non-partisans (Gobe and Chouikha, 2014, pp. 3-5), although this was deemed insufficient by the opposition who demanded that a technocrat government replace the Troika. The new Prime Minister, Ennahda's Ali Larayedh, then promised to hold parliamentary elections before the end of 2013 (Carter Center, 2014, p. 27). The announcement created a tight deadline for the completion of the constitution-making process which had to precede the national vote.

To speed things up, and to prevent the political crisis from escalating further, informal deliberations, so called national dialogues, took place outside the NCA. With regard to the text of the constitution, the most important of these dialogues was the one mediated by President Marzouki between April and May 2013. The negotiation involved all government partners, Ennahda, CPR, and Ettakatol, but only some of the opposition parties. While Al-Jomhuri and Democratic Alliance participated, the PF and Al-Massar decided not to join, and Nidaa Tounes withdrew after the first session (Gobe and Chouikha, 2014, p. 7). Nevertheless, the negotiations presented breakthroughs on several disputed issues, particularly concerning the political system. It was during this dialogue that participants, including Ennahda, agreed to assign substantial powers to the president (see Chapter 5). Despite the fact that it run

---

<sup>216</sup> Byrne, E., "Tunisian opposition leader shot dead", Guardian, 7 February 2013, available at: <https://www.theguardian.com/world/2013/feb/06/tunisian-politician-shot-dead> [accessed 27 August 2018].

externally to the NCA, the agreements struck during this dialogue made its way into the draft constitution prepared by the JDC.<sup>217</sup>

### *Joint Drafting Committee*

Parallel to the spring 2013 phase of the National Dialogue, the CA's Joint Drafting Committee worked on assembling the individual chapters of the constitution that had been produced by the constituent commissions. The JDC was supposed to review them, in conjunction with experts, before presenting the whole document to the NCA for the final discussion and voting. However, because the commissions were, at that time, still caught up in debates over a number of contentious points, articles still the subject of disagreement were left out entirely or included but with ambiguous or competing sections. To enhance the JDC's capacity to harmonize the drafts produced by six different constituent commissions that employed various drafting styles, the NCA enacted changes to its by-laws. The new formulation charged the JDC with preparing the final draft of the constitution "*based on* the work of the commissions" (Carter Center 2014, p. 37, emphasis added by the author). While this might have been necessary to give the JDC effective tools to pull the numerous sections into one coherent document, the ambiguous wording foreshadowed future conflicts about the JDC's role in shaping the text. In particular, it was unclear to what extent the committee had the authority to modify the drafts submitted to it.<sup>218</sup> This was problematic because the JDC membership followed a different principle to the

---

<sup>217</sup> Author Interview with Mouldi Riahi, NCA deputy who represented Ettakatol in the spring phase of the national dialogue, 8 October 2015, Tunis.

<sup>218</sup> Bsili, A., "Beginning and organization of the work of the constituent committees", UNDP, Constitution in Tunisia, Part 2, 26 September 2016.

constituent commissions in assigning seats. Bringing together top NCA figures in charge of the constitution, including the General Rapporteur, the NCA President, and the heads of each of the constituent commissions, resulted in the make up being favourable to the government forces (see Table 4).

When the JDC released the fourth, and final, draft of the constitution on 1 June 2013 and presented it to the NCA for discussion, it stirred up controversy. Many of the opposition deputies, but also the Ettakatol and CPR members, rejected it, arguing that it was not an accurate reflection of the work they had done at the commission level.<sup>219</sup> They accused the JDC, and especially the constitution's General Rapporteur, Ennahda's Habib Khedher, of overstepping their prerogatives and manipulating the content. An opposition deputy complained that the JDC was a "black box" to other deputies, who "did not know what went on there".<sup>220</sup> The case went as far as 70 deputies filing a lawsuit against the JDC actions at the Administrative Tribunal, which, however, refused to examine the case due to its lack of jurisdiction (Carter Center, 2014, p. 38).

### *Consensus Commission and the Quartet-led National Dialogue*

To diffuse the tensions, the NCA's President announced the formation of an ad-hoc body composed of NCA deputies, the Consensus Commission (CC). Mustafa Ben

---

<sup>219</sup> Author Interview with Salma Baccar, deputy for Al-Massar (30 June 2016, Tunis), and with Ikbel Msadaa, from CPR (9 November 2016, Tunis).

<sup>220</sup> This view was expressed by Rym Mahjoub, a NCA deputy representing Afek Tounes, in her contribution to the UNDP report on the Tunisian constitution-making process. Mahjoub, R., "From division to consensus: The role and the contribution of the Consensus Committee", UNDP, Constitution of Tunisia, Part 2, 26 September 2016, available at: <http://www.arabstates.undp.org/content/dam/rbas/doc/Compendium%20English/Part%202/25%20Rym%20Mahjoub%20EN.pdf> [accessed 28 August 2018].

Jaafar explained that this step was meant to accelerate the constitutional process and “resolve the contentious questions revealed by the opposition in relation to the 1 June project” (Geisser, 2014, p. 173). The composition of the CC more faithfully reflected the NCA’s outlook one year and a half into its existence, with an array of new or transformed political forces, and was consequently fit for purpose. Ennahda retained the strongest voice in the new body, but given its share of seats in the NCA and other constituent commissions, it was in fact underrepresented (Table 4).

However, as another breaking event hit, the on-going conflicts about the length of the NCA’s term, the controversial constitutional draft, and the resignation of the Troika government, culminated in a fully-fledged crisis. This event was an assassination of a member of the left wing Popular Front coalition and an NCA deputy, Mohamed Brahmi, who was killed in front of his home in Tunis on 25 July, approximately six months after Belaid’s assassination.<sup>221</sup> The incident resulted in an even greater degree of polarization between Islamists and their secular-leaning opponents. The crisis developed shortly after people in nearby Egypt took to the streets in large numbers to protest the FJP’s political leadership. The protests, which were followed by a military intervention and the ousting of President Mohamed Morsi, further stirred the political climate in Tunisia, where some of Ennahda’s critics argued that it was also time for the Tunisian Islamist party to leave power.<sup>222</sup>

Crucially, Brahmi’s death put the long-contested question of the NCA’s legitimacy squarely on the agenda. In its aftermath, around 60 disenchanted opposition

---

<sup>221</sup> BBC, “Tunisian politician Mohamed Brahmi assassinated”, 25 July 2013, available at: <https://www.bbc.com/news/world-africa-23452979> [accessed 28 August 2018].

<sup>222</sup> Weslaty, L., “Destitution de Morsi en Égypte: réactions mitigées en Tunisie”, Counterpoints, 6 July 2013, available at: <https://www.contrepoints.org/2013/07/06/130072-destitution-morsi-reactions-tunisie> [accessed 28 August 2018].

deputies withdrew from the body and, backed by civil society, launched a sit-in in front of its headquarters in the Bardo neighbourhood of Tunis (see Chapter 5). Additional protests erupted elsewhere in Tunis and other cities. The opposition called for the Ennahda-led government, which they saw as responsible for the worsening security situation, to step down. However, some of Ennahda's opponents went even further. The newly formed National Salvation Front coalition that united Nidaa Tounes with Al-Massar and the Popular Front demanded the scrapping of the NCA, whose mandate they saw as having expired a long time previously.<sup>223</sup> As a member of Nidaa Tounes told me, "I thought it lasted more than a year and had no more legitimacy in that context. We would have to find a way to organize elections as soon as possible."<sup>224</sup>

On the other side stood Ennahda, defending the NCA's legitimacy on the basis of a popular vote and mobilizing its followers to protect it (Gobe and Chouikha, 2014, pp. 9-11). Members of the other two government parties remained in the NCA, together with some independent MPs. Despite the fact that the possibility of a military intervention was generally seen as unrealistic, the fear that Tunisia could follow the Egyptian model, in the sense that the confrontation between the two camps could end in violence, was a sentiment shared by most of my interviewees.<sup>225</sup> It was in that

---

<sup>223</sup> See Tunisia Live, "NCA member Mohamed Brahmi Assassinated", 25 July 2013, available at: <http://www.tunisia-live.net/2013/07/25/nca-member-mohamed-brahmi-assassinated/> [accessed 12 May 2018]; and Leaders, "UGGT appelle à la dissolution de gouvernement et fixe un agenda pour l'adoption de la constitution", 30 July 2013, available at: <http://www.leaders.com.tn/article/11953-l-uggt-appelle-a-la-dissolution-du-gouvernement-et-fixe-un-agenda-pour-l-adoption-de-la-constitution> [accessed 28 August 2018].

<sup>224</sup> Author Interview with Selim Ben Abdessalam, 6 June 2014, Tunis.

<sup>225</sup> Author Interviews with Mahmoud Ben Romdhanne (Nidaa Tounes, 8 December 2016, Tunis); Samir Taïb (Al-Massar, 2 October 2015, Tunis); and Mohamed Fadhel Mahfoudh (Tunisian Order of Lawyers, 15 December 2016, Tunis).

atmosphere, on 6 August, that the NCA's President and Ettakatol's leader Ben Jaafar completely suspended the Assembly's work. The coming months were characterized by unceasing popular mobilization and a suspension of constitution-related talks (Geisser, 2014, p. 181).

While protestors repeatedly occupied the Bardo square throughout the summer of 2013, various negotiators sought to bring the antagonistic parties to the negotiating table. Most successful of these was the Quartet, formed of the heads of four national civil society organizations, each with historical significance and representative of different societal interests. Those were the workers syndicate (UGTT), the Tunisian Human Rights League, also known as LTDH, the bar association, that is the Tunisian Order of Lawyers, and the trade association advocating for employers, through the Tunisian Confederation of Industry, Trade, and Handicrafts, known as UTICA. It was by coming together that these organizations could be accepted as non-partial mediators by all sides (Haugbølle et al., 2017, p. 31).

During this phase of the national dialogue, political forces tackled three problematic issues. They set the timeframe for the ending of the Troika government and discussed the cabinet that would replace it, established the calendar for the coming presidential and legislative elections, debated electoral law and the composition of the ISIE, and planned the constitution-making process. Ultimately, in October 2013, parties agreed that the constitution would be finalized from within the NCA.<sup>226</sup> The ensuing roadmap was thus based on a compromise between the opposition that demanded that the Ennahda government stepped down, as well as Ennahda itself,

---

<sup>226</sup> See English translation of the Roadmap (Haugbølle et al. 2017: 43-5).



whose members rejected the NCA's dissolution as a red line that could not be crossed.<sup>227</sup>

Following the successful agreement on the roadmap, the Quartet-led National Dialogue continued with regular meetings between October 2013 and January 2014 during which parties discussed details pertaining to the October deal. These talks brought together most of the major political forces in a highly inclusive setting. Participation in the dialogue was not assigned on the basis of parliamentary blocs, as in the case of the constituent commissions and the CC, but to individual parties. This meant that as many as 23 political parties with NCA representation<sup>228</sup> participated and, significantly, were all granted an equal voice in decision-making. This format enhanced the voice of opposition parties while diminishing that of Ennahda. It also provided an opportunity for the Nidaa Tounes, an increasingly important secularist force that had only a few deputies in the NCA and who had joined the newly formed party after leaving their original groups, to exert its political influence through a recognized negotiation channel. However, four political parties with considerable representation in the NCA, the CPR, Aridha Chaabia, Wafa Movement, and the Democratic Current,<sup>229</sup> were not involved in the negotiations as they chose not to participate (Haugbølle et al., 2017, p. 36).<sup>230</sup>

---

<sup>227</sup> Interview with Habib Khedher, Ennahda, 25 November 2016, Tunis.

<sup>228</sup> Due to the fluctuations in the party political landscape, the figure often differs from one source to another.

<sup>229</sup> The Democratic Current (Attayar Dimokrati) was created by former CPR deputy, Mohamed Abbou.

<sup>230</sup> However, a CPR deputy, Omar Chetoui, complained that while his party initially did reject any participation in the dialogue or the signing of the roadmap, it was then barred from joining the talks at the later stages, by which time they had changed their position (M'rad, 2015, p. 50).

The participants in the dialogue occasionally dealt with individual issues related to the substance of the constitution, but it was the CC, which resumed its work in December 2013, that was primarily responsible for resolving the remaining contentious issues in the draft. As one CC member put it, while the dialogue provided a general political direction, its members did not discuss “the [constitution’s] content and the formulations. The CC played a primary role”.<sup>231</sup> The Quartet-led National Dialogue formed a new framework in which the CC operated. While the NCA, where Ennahda controlled most seats, continued as the main channel through which the constitution was negotiated, it was no longer the only, or even the most important, entity where political decisions were made. As progress in the dialogue negotiations and the work on the constitution in the NCA were closely interlinked, so also was the distribution of power during the dialogue relevant for the constitutional talks at the NCA. The distribution of power at the National Dialogue was more favourable to non-Islamist parties than in the NCA, and even in the CC. This factor was also seen on those occasions when opposition deputies sought to push through their preferred wording to contentious articles through the CC by threatening Ennahda that they would raise those points at the National Dialogue level. As a deputy for the opposition Al-Massar party told me:

When we couldn’t advance anymore [in the CC], we went to the dialogue. We would pass a word to the head of our party and the Quartet, and there were also constitutional experts who were very progressive and democratic, and who defended those issues even more. In the dialogue, the balance of power was better than here [in

---

<sup>231</sup> Author Interview with Mouldi Riahi, NCA deputy from Ettakatol and CC member, 8 October 2015. For a similar account, see M’rad (2015, pp. 86-7).

the NCA]. Here there was a situation of majority-minority, but there, each party, whatever number of deputies, had the same importance.<sup>232</sup>

Otherwise, disputes over the constitution only rarely reached the National Dialogue.

The CC continued to play the role of the major constitution-making channel until almost the end of the process.<sup>233</sup> It served as an important channel for conflict resolution and for striking compromises wherever there appeared to be an insurmountable problem on individual articles of the constitution, which were presented to the plenary assembly for vote. It was in the CC that non-Islamist opposition parties managed to increase the power of any future president, tone down the overall religious language of the constitution, remove the controversial “unamendable principle” that positioned Islam as the religion of state and, instead, made sure that Articles 1 and 2, which guaranteed the civil nature of the state, could not be amended in the future (see Chapter 5). However, given its informal status, one of the most controversial questions the NCA had to tackle was how to ensure that all deputies, dispersed as they were, among the many political blocs and parties, voted in favour of the amendments proposed by the CC. Finally, deputies amended the NCA by-laws, which then stipulated that the amendments emanating from the CC were binding on all the political blocs (Carter Center, 2014, p. 42). While the wording was interpreted in various ways by the deputies, the Carter Center (2014, p. 44) report

---

<sup>232</sup> Author Interview with Salma Baccar, 30 June 2016, Tunis.

<sup>233</sup> The CC’s role began to diminish only towards the very end of the constitution-making process, when a similar responsibility was then taken on by the coordination meetings of the heads of the parliamentary blocs. Those meetings brought together representatives of all the major forces, along with the NCA President and the General Rapporteur (Carter Center, 2014, p. 45).

claims that they generally voted in line with its guidelines, which confirms the importance of the commission in securing the adoption of the constitution by widely disparate groups.<sup>234</sup>

The analysis shows that there were three key channels through which the majority of the constitutional negotiations developed which were; (1) the six constituent commissions of the NCA that produced the first drafts of the individual chapters of the constitution; (2) the Joint Drafting Committee which assembled these drafts while at the same time amending the wording on some occasions; and (3) the Consensus Commission, which was responsible for resolving any remaining disagreements about constitutional articles that had arisen during the last phase of the process.

#### 6.1.2 Formal, Substantive, and Perceived Inclusiveness

I now turn to an evaluation of how inclusive, both formally and substantially, the constitution-making design was. I further account for the changes in substantive inclusiveness, by comparing the standing of the parties in the NCA's constituent commissions to that in the new constitution-making channels created later in the process. The analysis demonstrates that constitution-making design was considerably inclusive to begin with, and that substantive inclusiveness progressively increased in the final year of the process with the introduction of the CC. To understand how protagonists of constitution change themselves evaluated inclusiveness, the final part

---

<sup>234</sup> This is not, however, to say that the deputies only rubber stamped the agreements reached at the CC. The voting on the articles led to several deadlocks, as some of the deputies refused to accept the pre-negotiated wording, or initiated new amendments (Carter Center, 2014, p. 44).

reviews their perceptions, demonstrating that what they cared for was, ultimately, shaping the text of the constitution.

#### *Formal Inclusiveness*

To assess formal inclusiveness, I ask whether all the major political parties of the anti-Ben Ali coalition had members in the NCA, the main constitution-making body, or whether any of these parties was excluded from constitution-making by being denied membership. The NCA allowed for the inclusion of all the major political actors of the anti-Ben Ali coalition that I identified in Chapter 4, and was therefore formally inclusive. The only political players that were systematically excluded were figures from the former regime who had held government responsibility under Ben Ali or held positions within his ruling party, the RCD (Carter Center, 2011, p. 18). However, this is not of concern here.

#### *Substantive Inclusiveness*

Substantive inclusiveness, that is the influence that each political party had on shaping the constitution, depended on their electoral popularity, as well as on the constitution-making design. To gauge this type of inclusiveness, I consider proportionality, internal organization of the NCA, the method by which the constitution was approved, and safeguarding mechanisms.

**Proportionality:** To measure proportionality, I compare each party's seat share in the NCA to the votes they won in the October 2011 polls. While exact proportionality is unlikely, I am interested especially in the question of whether or not smaller parties were significantly underrepresented, or the strongest party overrepresented. The NCA was popularly elected and proportionality was regulated

by the electoral system. Voters selected the 217 NCA deputies in one round by voting for closed lists in a proportional representation (PR) system where the distribution of seats was determined by the Hare Quota with Largest Reminders (HQLR). The 33 electoral districts were medium sized, in most cases distributing 5 seats or more, with the maximum being 10 (Carey, 2013, p. 1, p. 4).

As a result of these electoral rules, while Ennahda, whose showing in the 2011 elections was the strongest, claimed a seat bonus of 4 % above its vote share, it was not the largest such bonus (see Table 1). Carey (2013, p. 1) pointed out that the bonuses of smaller electoral alliances and parties were as large, or larger than, those won by Ennahda. This resulted in a situation where the most electorally popular party fell short of an overall majority in the NCA. Carey demonstrated that had a different proportional formula been used, the disproportionality of the electoral results would have been more significant. Using district-level data on the distribution of votes across lists, he simulated the election results using other commonly used techniques for converting votes into seats in proportional representation systems. If any of those techniques had been applied, Carey argued, Ennahda's seat share would have been larger (2013, p. 1). The D'Hondt Divisor, which is a frequently used method, would have boosted Ennahda's share to 69 % of seats, equipping the party with the two thirds majority necessary to pass the constitution (2013, p. 7).<sup>235</sup> In contrast, the HLQR

---

<sup>235</sup> In most cases such election simulation should have been treated with caution, as with different electoral systems, the behaviour of voters, as well as parties seeking office, was prone to change. These caveats are less pressing in the Tunisian case. This is because, as Carey (2013) argued, the difference between the D'Hondt Divisor method used in the experiment and the applied Hare Quota with Largest Reminders, is difficult for voters as well as for parties to appreciate. More importantly, in the context of the first competitive elections that the country had experienced, it is more than likely that voters had not yet learned to factor in electoral systems into their electoral strategies.

method used for the 2011 NCA elections ensured that Ennahda received only 41 % of the seats in the Assembly, a highly proportional result.

The number of deputies that each party had in the NCA would be irrelevant information unless we knew what they could do with their allocation. In other words, to assess substantive inclusiveness, we need to understand the NCA's internal organization and the mechanisms for approving the constitution.

**Internal organization of the NCA:** The six NCA constituent commissions oversaw the drafting of individual sections of the constitution and were, therefore, key to the production of the constitution until April 2013 when the JDC began to assemble the drafts they proposed. The membership in the 22-seat strong commissions was allocated to parliamentary blocs in proportion to their NCA seat share at the time of the commissions' formation in February 2012.<sup>236</sup> Leadership positions in the committees, too, were assigned to the blocs according to their overall NCA seat share. This, in turn, meant that most of those posts were in hands of the governing Troika coalition, and especially Ennahda. To enact decisions, for which a majority of members who were present was needed, Ennahda had to find the support of an additional three of the remaining 13 members,<sup>237</sup> and thereby retained the upper hand at the commission level (Table 4). This was, however, a result of the party's impressive showing in the 2011 elections, not because of any discrimination in its favour in the constitution-making rules.

---

<sup>236</sup> See Article 42 of the NCA Rules of Procedure. ConstitutionNet, "The Tunisian National Constituent Assembly. Rules of Procedure", International IDEA, 16 December 2011.

<sup>237</sup> These figures are only relevant for the situation when all of the commission members were present at the session.

The only objection raised regarding the breakdown of the membership of the commissions was aimed against the composition of the JDC, a committee which was responsible for compiling the drafts of the constitution. This was because the governing Troika coalition was overrepresented on the committee. Ennahda controlled 43.8 % of seats in the JDC, compared to 41 % in the NCA, and the bonuses of the CPR and Ettakatol were much more significant, with the CPR going from 13.4 % of seats in the NCA to 25 % in the JDC, and Ettakatol from 9.2 % to 12.5 % (Table 4).

**Approval mechanisms:** Finally, substantive inclusiveness depends on the mechanisms used for the approval of the constitution. Deputies first voted on each article separately, and an absolute majority was needed for approval. Only then could the NCA vote on the entire draft, which required the support of a two thirds majority if it was to pass. In a situation where such a majority was not found, a second reading had to take place within one month, at the end of which a two thirds majority was once again required. If that level of majority was yet again not reached, a referendum was to follow. In such a case, the constitution then would have been adopted if it garnered the support of the majority of the voters.<sup>238</sup> As projected, the referendum, at best, provided a weak safeguard for the smaller parties.

In practice, each article had to be adopted by 109, and the whole constitution by 145 deputies out of the total of 217. The NCA was composed of a wide array of forces where political power was not concentrated in any single political party. Passing the constitution, therefore, required a coalition. Despite being the most electorally

---

<sup>238</sup> See Article 3 of the Provisional Organization of Public Authorities Law which served as an interim constitution. Guerfali, R., “Loi constitutionnelle n°6-2011 du 16 décembre 2011, relative à l’organisation provisoire des pouvoirs publics”, Nawaat, 14 February 2013, available at: <https://nawaat.org/portail/2013/02/14/traduction-fr-loi-constitutionnelle-n6-2011-du-16-decembre-2011-relative-a-lorganisation-provisoire-des-pouvoirs-publics/> [accessed 28 August 2018].



popular, Ennahda, with 89 deputies, had to reach out to other parliamentary blocs to amend articles and to approve the constitution. In the latter case, the party was 57 seats short, a substantial margin of the necessary number to pass the constitution.

Considering proportionality, internal NCA organization and approval mechanisms, it is possible to conclude that before changes to the NCA design were introduced in June 2013 when the CC was established, the design was already substantively inclusive, in the sense that it promoted the dispersal and sharing of power, and maximized the required majority for passing the constitution. Even though Ennahda retained the strongest position in the constitution-making process, the party's ability to pass the constitution it preferred was constrained, especially by the two thirds majority required for its approval. The only aspect of the design that limited substantive inclusiveness was the JDC, which saw the government overrepresented.

**Changes to substantive inclusiveness:** The capacity of smaller, secularist parties to shape the constitution further increased in the last phase of the constitution-making process thanks to the establishment of the Consensus Commission. Formed in June 2013 to diffuse political tensions that crystalized during the spring months, the CC reflected the changing distribution of seats in the NCA, and gave more weight to the opposition. Ennahda's representation, consequently, decreased from the 41 % of seats it controlled in the NCA and the 40.9 % in other constituent commissions, to 26 % in the CC (Table 4).

In addition to the changes in the constitution-making design, the influence of smaller, opposition parties further increased when the Quartet-led National Dialogue provided a new framework for the CC's work. The distribution of seats in the NCA did not become irrelevant as the Assembly was still in charge of passing or rejecting the final draft. However, the fact that the efforts of the strongest party to push through

wording others opposed might have negatively affected the negotiations at the National Dialogue level, which dealt with the new government and the forthcoming elections, created a favourable set of circumstances for the secularist opposition. All parties had the same number of seats in the dialogue negotiations, and the smaller secularist parties could further benefit from having the weight of Nidaa Tounes behind them. As a result, during the last months of the constitution change process, the leverage of smaller parties over the text was almost on a par with that of Ennahda, despite their poorer showing in the 2011 elections.

#### *Parties' Perceptions of Inclusiveness*

The above analysis revealed that the constitution-making design was both formally and substantively inclusive, and increasingly so as the process evolved. This section considers the perceptions of leading members of the major parties of the anti-Ben Ali coalition of inclusiveness. It reveals that not all of them viewed the design as inclusive from the very beginning. It also shows that the type of inclusiveness that they sought to develop was primarily substantive inclusiveness, in other words, their capacity to adjust the text.

In my interviews, non-Islamists generally complained that prior to the summer 2013 crisis and the introduction of the CC, constitution-making was guided by the “minority-majority approach”. Ennahda’s electoral popularity gave the Islamist and conservative factions, which comprised Ennahda as well as some other parties and individual deputies, as demonstrated in Chapter 4, the strength to promote their

preferred constitutional vision.<sup>239</sup> According to a secularist deputy from Ettakatol, Lobna Jeribi:

...the debates in the constituent commissions brought results that in certain instances lacked balance, because the commissions represented the views of the majority conservative parties. That mathematical majority resulted in a text within which certain safeguards were omitted. We did not secure the concept of the civil nature of the state, or in my commission, acceptance of the universal declaration of human rights, and equality between men and women.

She further maintained that the “language of representation, of legitimacy and numbers” ruled the day in the NCA before the foundation of the CC, and that constitution-making proceeded amid fears that the conservative stream would be able to impose their agenda on the minority, that is “left, the progressivists”.<sup>240</sup>

This “minority-majority approach” to constitution-making, according to Ennahda’s opponents, began to melt away following the creation of the CC. “There was a better [power] balance at the CC... We were aspired to consensus”, explained Jeribi.<sup>241</sup> According to the NCA President, Mustafa Ben Jaafar, the CC’s originality lay in the fact that “the opposition was overrepresented so that the majority

---

<sup>239</sup> Author Interview with Lobna Jeribi (Ettakatol, 14 December 2016, Tunis); Selim Ben Abdessalam (Nidaa Tounes, 23 November 2016, Tunis); Samir Taïeb (Al-Massar, 2 October 2015, Tunis); Mohamed Gahbich (Democratic Alliance, 25 June 2014, Tunis); Salma Baccar (Al-Massar, 30 June 2014, Tunis); and Mongi Rahoui (WATAD, 2 July 2014, Tunis).

<sup>240</sup> Author Interview with Lobna Jeribi, 14 December 2016, Tunis. The extensive usage of “majority principle” at the expense of a consensual approach was also criticized at the time by the UGTT (Gobe and Chouikha, 2014, p. 10).

<sup>241</sup> Author Interview, 14 December 2016, Tunis.

parliamentary blocs did not impose their hegemony and did not monopolize internal debates”.<sup>242</sup> However, some of the opposition deputies stressed that even though the CC began its work in June 2013, the minority-majority approach was definitively ended only after the withdrawals from the NCA following Brahmi’s assassination in July. At that point, the parallel talks of the Quartet-led National Dialogue were underway, and the general ambience in the CC completely changed. This was, according to Ennahda’s opponents, when the party started to negotiate “without taking into consideration the respective weight of each camp”,<sup>243</sup> and “when the climate of equilibrium” enabled the progressive camp to “really seize concessions”.<sup>244</sup>

The aspiration of smaller, secularist parties to enhance their influence on the text of the constitution, and therefore substantive inclusion, is apparent from these interviews. This is not to say formal inclusiveness, that is formal membership of the constitution-making channels, was unimportant. Some of my interviewees pointed to the benefits of the regular interactions that they maintained over the course of constitution-making, be it because they sat in the same constituent commission, consumed lunch at the same table in the NCA cafeteria, or because they travelled together abroad or around Tunisia on NCA business.<sup>245</sup> My interviews suggest that these interactions transformed some of the relationships between deputies, enabled them to build personal ties across the Islamist-secularist divide, and to eliminate some of the prejudices they had held at the time they entered the Assembly.

---

<sup>242</sup> The quote comes from an interview with Ben Jaafar conducted by Geisser (2014, p. 173).

<sup>243</sup> Author Interview with Selim Ben Abdessalam, 23 November 2016, Tunis.

<sup>244</sup> Author Interview with Mongi Rahoui, 2 July 2014, Tunis.

<sup>245</sup> This information on the development of personal relationships comes from my interviews. See also Perez (2016) for existing ethnographic research on the NCA.

For instance, an opposition deputy for Afek Tounes wrote for the UNDP in 2015, a year after the adoption of the constitution:

I was very close with the other members of the democratic bloc, but I also got to know the other deputies on the Consensus Committee as the work and negotiations progressed. I remember mutual distrust that separated us at the beginning of the NCA's mandate. That changed a lot over time. Accepting others is an integral part of any democracy. It is very important. I was able to get to know the people underneath the hard outer shells that some Assembly members presented. The conflicts and the ensuing reconciliations brought us closer together.<sup>246</sup>

A similar sentiment was expressed by a deputy for the government party, CPR:

We arrived [at the NCA] with differences and prejudices, but little by little a climate of confidence has been established... We realized that the political parties had a broad spectrum, and that there could be personal affinities. This could be seen during the work in the commissions, which brought us together.<sup>247</sup>

These changes were mentioned not only by the secularists, but also by Ennahda deputies.<sup>248</sup> They were also noticed by observers. A legal advisor to the NCA, Abdel

---

<sup>246</sup> See Mahjoub, R., "From division to consensus: The role and the contribution of the Consensus Committee", UNDP, Constitution of Tunisia, Part 2, 26 September 2016, p. 4. Rim Mahjoub spoke along these lines also during our interview conducted on 3 July 2014 in Tunis.

<sup>247</sup> Interview with Ikbel Msadaa, CPR, for the Tunisian newspaper Inkyfada. See Sboui, S., "Ikbal Msadaa: Députée CPR, qui ne se représente pas", Inkyfada, 15 October 2014, available at: <http://inkyfada.com/2014/10/ikbal-msadaa-deputes-cpr-tnelec2014/> [accessed 28 August 2018].

<sup>248</sup> Author Interview with Sabhi Atigue, 15 November 2016, Tunis.

Bsili, noted of the constituent commissions that the “immediate effect was unexpected: a lot of prejudices were challenged, ideas were shaken, and in some case completely obliterated, and there was a feeling that the various participants were beginning to come closer together”.<sup>249</sup>

These changes in inter-personal relationships clearly helped the negotiations, especially during the final months of the process when members of the CC sought to reach compromises on some of the most intractable points. The interviews suggest that deputies across the anti-Ben Ali coalition were less mistrustful of each other and that they also better appreciated each other’s positions, even when they personally disagreed with them.<sup>250</sup> Another tangible benefit was the opportunity to get to know the opponents’ tactics. “We knew each other better, and we could distinguish when they stood by their position, played a comedy, or just wanted to slow things... And that made for less tensions,” explained Ikbel Msadaa from CPR.<sup>251</sup> There were, nevertheless, limits to what these developments could achieve. As a deputy for Nidaa Tounes told me:

When you make politics, you can respect your competitor, but that doesn’t mean it will be easier to find a compromise. The negotiations on the points of conflict were always very hard. The 1 June draft was unacceptable to us... We did everything to try to block it, to make sure it would not be adopted.

---

<sup>249</sup> Bsili, A., “Beginning and organization of the work of the constituent committees”, UNDP, Constitution in Tunisia, Part 2, 26 September 2016.

<sup>250</sup> Author Interview with Selim Ben Abdessalam, 23 November 2016, Tunis.

<sup>251</sup> Author Interview, 9 November 2016, Tunis.

When asked what his strategy was in the event that Ennahda tried to push the contentious draft forward, he explained:

My position was that this Assembly had failed and it must be dissolved... There had to be new elections with the new Assembly in charge of finalizing the new constitution. But with better representation: weaker representation for Ennahda and stronger for the secular camp.<sup>252</sup>

The benefits of formal inclusion in smoothing the negotiations, therefore, seem to be conditional on whether the parties won a degree of influence over the text that they judged as sufficient for their needs. While the NCA was formally inclusive from the beginning of the constitution-making process, as I have shown above, disenchanted deputies left the drafting body in July 2013 in protest at the controversial draft constitution and other issues, and even demanded its dissolution. At that point, according to a leader of the opposition Democratic Alliance, mistrust again returned to “record levels”, threatening to destroy “all the prior and fragile understandings that had been reached”.<sup>253</sup> An essential ingredient of constitution-making design, in terms of inclusiveness, was, therefore, the ability to shape the constitution.

### 6.1.3 Summary

The constitution-making process adopted in Tunisia following the removal of Ben Ali has been widely praised for its inclusiveness, and rightly so. Analysis has confirmed

---

<sup>252</sup> Author Interview with Selim Ben Abdessalam, 24 November 2016, Tunis.

<sup>253</sup> See El-Hamdi, M., “Dissolving tensions between the groups and resuming the work of the Constituent Assembly. The Transitional experiment in Tunisia: between conflict and agreement”, UNDP, Constitution in Tunisia, Part 2, 26 September 2016.

that it was designed to promote both types of inclusion examined in this thesis, formal and substantive. The degree of substantive inclusiveness increased further in the last year of the process as constitutional negotiations moved to the CC, and the talks about a new government and elections were underway within the external platform of the Quartet-led National Dialogue. It was substantive inclusiveness that mattered most to the parties. The building of trust and interpersonal ties, which was facilitated by formal inclusion of all the important parties of the anti-Ben Ali coalition in the main constitution-making channels and which had some positive effects on the negotiations, seems only to have been possible in a situation when Ennahda and their non-Islamist opponents became capable of shaping the constitution to a similar extent. The second part of this chapter examines how inclusive the constitution-making design in Egypt was.

## **6.2 Limits to Inclusiveness in the Constitution-making Design in Egypt**

The process of negotiating and writing the new constitution in Egypt was initiated following the first democratic elections after the ousting of President Mubarak in the eighteen days of revolution that shook the country in January 2011. The new parliament took on its final shape exactly a year later, in January 2012, when votes were finally counted and translated into parliamentary seats. The newly elected MPs then selected the 100 members of the Constituent Assembly, the body vested with the task of writing the charter. The process of establishing the criteria for selecting its deputies, however, was contested and, consequently, so was the composition of the CA. As a result of these conflicts, in April 2012, only a month after the first CA met, it was dissolved by a court. The new CA selected by political parties began its deliberations in mid-June 2012. Its members worked for approximately five months



before they approved the document on 29 November, and the constitution-making process drew to a close a month later, on 22 December, when voters approved the change in the constitution in a popular referendum.

The analysis of the constitution-making process that I present below indicates the limits of both formal and substantive inclusiveness. Even though the CA, by design, was formally inclusive of all the major parties of the anti-Mubarak coalition, this aspiration did not materialize in practice as some of the non-Islamist parties refused to participate in the Assembly due to the disputes over its composition. Meanwhile, substantive inclusiveness was curtailed by the low majority necessary for the approval of the constitution. Both formal inclusion and the ability of the weaker, non-Islamist parties to affect the text then decreased following their withdrawal from the CA in November 2012. The remaining members of the Assembly approved the constitution despite their absence. I begin the investigation by introducing the main constitutional-making channels, in preparation for an assessment of how inclusive the constitution-making design was.

#### 6.2.1 Main Constitution-making Channels

As in the Tunisian case study, the overview of the main constitution-making channels is contextualised within the wider political situation in which the constitutional change process played out, and to changes, over time, in the constitution-making design. The analysis relies on a systematic review of Egyptian online daily newspapers, *Ahram Online* and *Egypt Independent*, foreign media coverage, and qualitative interviews.

##### *First Constituent Assembly*

Unlike the Tunisian NCA, the Egyptian CA was not elected in a popular election, but

its members were selected by the parliament, where, as I explained in Chapter 4, Islamist parties were in the majority. It was immediately after the parliamentary elections that the controversies surfaced on the composition of the CA, which then engulfed the whole constitution-making process and featured among the reasons why non-Islamist deputies later resigned from that body (see Chapter 5). At the core of these conflicts was the question whether the CA should be composed of representatives from within or outside of parliament, the issue of the proportion of Islamist versus non-Islamist deputies, and the size of the majority required for the approval of the constitution. The FJP and Salafist parties, having emerged victorious from the recent elections, assumed that the popularly elected parliament had the authority to choose CA members from sitting MPs. Secular-leaning parties and revolutionaries argued that those tasked with drafting the constitution should not come from the pool of MPs but be selected from those outside of it to ensure that the Assembly would be representative of the whole of society. They also supported an equal ratio of Islamist and non-Islamist groups in the CA, and larger majorities for the approval of articles.<sup>254</sup>

The first CA met on 28 March 2012, with half of the deputies coming from

---

<sup>254</sup> For heated debates about the principles on which selection of members of the CA were based, see Rashwan, N.H., "Political groups challenge legality of MPs' inclusion in constituent assembly," Ahram Online, 7 March 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/36227/Egypt/Politics-/Political-groups-challenge-legality-of-MPs-inclusi.aspx> [accessed 28 August 2018]; Ahram Online, "Brotherhood increases MP ratio for constituent assembly ahead of Saturday vote," 17 March 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/36977/Egypt/Politics-/Brotherhood-increases-MP-ratio-for-constituent-ass.aspx> [accessed 28 August 2018]; and Ahram Online, "Revolutionaries call for weekend protests against rules for drafting constitution," 22 March 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/37421/Egypt/Politics-/Revolutionaries-call-for-weekend-protests-against-.aspx> [accessed on 28 August 2012].

one or other of the two houses of parliament. The other half of the seats went to figures from outside of parliament, some of whom were related to political parties and others who represented revolutionary groups, experts, state institutions, and civil society. This make-up was criticized by secular parties who demanded that the CA should have a lesser proportion of sitting MPs.<sup>255</sup> Moreover, while the FJP argued that there were 48 Islamists in the CA, their opponents complained the proportion was higher.<sup>256</sup>

In protest to the body's alleged Islamist dominance, most non-Islamist drafters, including leftists, liberals, revolutionaries, and the Coptic Church delegates, left the newly formed CA in the week following the nomination of its members.<sup>257</sup> Echoing popular sentiment, a deputy from the leftist Socialist Popular Alliance explained he withdrew "because the composition [of the CA] wasn't representative".<sup>258</sup> Multiple lawsuits were then filed by lawyers on behalf of the secular coalition, arguing that too

---

<sup>255</sup> For instance, the liberal FEP sought a proportion of 20 MPs to 80 non-MPs. Meanwhile, the FJP preferred the CA to comprise 40 MPs and 60 non-MPs. Salafi parties preferred an even higher proportion of parliamentarians, arguing for 60 or even 70 MPs. The FJP eventually backed a 50:50 distribution as being the most likely to ensure a compromise between the two camps. See Rashwan, N.H., "Political groups challenge legality of MPs' inclusion in constituent assembly," *Ahram Online*, 7 March 2012; and *Ahram Online*, "Brotherhood increases MP ratio for constituent assembly ahead of Saturday vote," 17 March 2012.

<sup>256</sup> Fayed, S., "Liberals, Islamists tussle over Egypt constitution", *Reuters*, 27 March 2012, available at: <https://www.reuters.com/article/us-egypt-constitution/liberals-islamists-tussle-over-egypt-constitution-idUSBRE82Q0OA20120327> [accessed 28 August 2018].

<sup>257</sup> Resignations began with those of a number of liberal and left wing individuals on 25 March 2012, and these were followed by those of revolutionaries and representatives of the Wafd Party and Al-Azhar. See *Ahram Online*, "8 constituent assembly members resign to protest Islamist dominance," 25 March 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/37652/Egypt/Politics/-/constituent-assembly-members-resign-to-protest-Is.aspx> [accessed 28 August 2018]; and *Ahram Online*, "Al Azhar withdraws from constituent assembly", 29 March 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/38022/Egypt/Politics/-/AlAzhar-withdraws-from-constituent-assembly-.aspx> [accessed 28 August 2018].

<sup>258</sup> Author Interview with Mustafa Kamel El-Sayyid, Cairo, 7 August 2014.

many MPs were elected to the CA at the expense of people from outside of the parliament. As a result, the Supreme Administrative Court suspended the contested body in April 2012, after it had met only a few times in the short period of its existence.<sup>259</sup> The decision was welcomed by many of the Islamists' opponents, disenchanted with the Assembly's outlook. "I thought they learned a lesson", commented the leader of the FEP, an entity supported by many Coptic Christians that had previously decided to boycott the CA.<sup>260</sup>

### *Second Constituent Assembly*

After nearly two months of deliberations, a deal to elect the new CA emerged in June 2012. It was, at least at first, well-received across the political spectrum. Political forces agreed to reduce the proportion of drafters drawn from sitting MPs from 50 to 39, and to set the ratio of Islamists to non-Islamists at 50:50 as demanded by leftists and liberals.<sup>261</sup> While 39 seats were reserved for MPs from different parties, the remaining 61 seats went to people outside of the parliament, including judges, revolutionaries, churches and Al-Azhar representatives, national figures, delegates from state agencies and unions (see Table 5). However, as the political allegiance of these members to either the Islamist or secularist camps was less clear-cut, the deal

---

<sup>259</sup> Mourad, S., "Court ruling brings Egypt constitutional crisis to climax," Ahram Online, 10 April 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/38983/Egypt/Politics-/Court-ruling-brings-Egypt-constitutional-crisis-t.aspx> [accessed 28 August 2018].

<sup>260</sup> Author Interview with Ahmed Said, Cairo, 12 August 2014.

<sup>261</sup> For a detailed description of the negotiations, see Abdul Majid, W., "al-qissa al-kamila lima rakat al-jam'iyya al-ta'sisiyya (2-2)" (Full story of the Constituent Assembly Battle, 2-2), Al-Shorouk, 21 June 2012, available at: <http://www.shorouknews.com/columns/view.aspx?cdate=21062012&id=e0f322e9-e17c-42fa-89c0-39057201e099> [accessed 28 August 2018].

begun to crumble as soon as the parliament came to vote on the names of those to be included. In particular, a leading ESDP member criticized the fact that as many as 22 deputies from outside of parliament were to be included among the 50 seats non-Islamists expected to control.<sup>262</sup> Complaining that Islamists would once again dominate the drafting body, leftists, liberals, and revolutionaries boycotted the parliamentary session set aside to select the deputies, and some announced their complete withdrawal from the CA.<sup>263</sup> As had been the case with the first, the legitimacy of the second Assembly, even from its inception, was called into question because of its composition, and due to the fact that its members had been selected by a parliament that had been dissolved.

---

<sup>262</sup> Ahram Online, “On verge of consensus, rifts reemerge over Egypt’s Constituent Assembly”, 11 June 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/44501/Egypt/Politics-/On-verge-of-consensus,-rifts-reemerge-over-Egypt-.aspx> [accessed 28 August 2018].

<sup>263</sup> Six political parties expressed their dissatisfaction by announcing their withdrawal from the second CA, and more than 50 MPs walked out in protest from a parliamentary session during which CA members were to be elected. Some of the deputies that withdrew, however, later returned. See El-Gundy, Z., “Liberals, leftists stage 2nd walkout from Egypt’s Constituent Assembly,” Ahram Online, 11 June 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/44590/Egypt/Politics-/Liberals,-leftists-stage-nd-walkout-from-Egypt-Co.aspx> [accessed 28 August 2018]; Tarek, S. and H. Maher, “Egypt’s Constituent Assembly unveiled amid fears of Islamist dominance,” Ahram Online, 13 June 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/44716/Egypt/Politics-/Egypt-constituent-assembly-unveiled-amid-fears-of-islamist-dominance.aspx> [accessed 28 August 2018]; and MENA, “Moussa expects return of withdrawn Constituent Assembly members”, Egypt Independent, 28 June 2012, available at: <https://www.egyptindependent.com/moussa-expects-return-withdrawn-constituent-assembly-members/> [accessed 28 August 2018].

<b>Represented party/group</b>	<b>CA seats</b>
<i>Members from parliament</i>	<i>39</i>
FJP	16
Nour Party	8
Wafd Delegation	5
FEP	2
ESDP	2
Wasat Party	1
Karama Party	1
Socialist Popular Alliance	1
Reform and Development	1
Building and Development	1
<i>Appointed members</i>	<i>61</i>
Judges	15
Religious figures (Al-Azhar)	5
Religious figures (Christian churches)	4
Worker and farmer syndicates	7
Professional syndicates	7
State agencies (police, army, ministry of justice)	3
Public figures	10
Revolutionary youth	10
<b>Total</b>	<b>100</b>

**Table 5. Composition of the second CA in Egypt**

*Source:* Ahram Online (2012e).

Despite on-going controversies, the negotiations over the text of the constitution began immediately after the release of the names of those selected to serve on the CA. The drafting was carried out by four committees, each of which was responsible for one of the chapters of the constitution. The themes were: (1) state and society; (2) rights and freedoms; (3) public authorities, which was sub divided into four sections dealing with the legislative, executive, judiciary, the armed forces and national security; and (4) independent authorities such as the electoral and anti-corruption commissions.<sup>264</sup> An additional fifth committee was responsible for public outreach and incorporation into the text of ideas gathered through this channel (Hulsman et al., 2013, p. 46). Next, members of the Drafting Committee (DC),

---

<sup>264</sup> Author Interview with Mohamed Mohi El-Din, member of the Ghad Al-Thawra Party and a CA deputy, Cairo, 10 August 2014. See also Hulsman et al. (2013, p. 46).

composed of legal experts from the CA and from outside of it, were responsible for reviewing the text and adjusting the wording of the articles from both linguistic and constitutional perspectives before submitting them to a plenary session for discussion (Hulsman et al., 2013, p. 46). Mohamed Mohi El-Din, who represented the liberal Ghad Al-Thawra Party at the CA, commended the fact that the DC “began to modify the work [done by the constituent committees], which was problematic”.<sup>265</sup>

Both my interviews and available newspaper reports indicate that despite the controversies that surrounded its composition, the first months of the second Assembly’s term provided a period of intense discussions and exchange of ideas. According to a deputy from the liberal Wafd Party, the fact that the non-Islamists managed to stay in the CA for five months was “enormous evidence that there was a space for negotiation” and compromise.<sup>266</sup> Mohamed Mohi El-Din added that at least at the beginning of the CA’s mandate, “there was a desire to give Egyptians the message that there weren’t unbridgeable differences among the political actors, and that there could be a dialogue and consensus”.<sup>267</sup>

The situation, however, did not last, especially as conflicts over the

---

<sup>265</sup> Author Interview with Mohamed Mohi El-Din, Cairo, 10 August 2014. See also Ahram Online, “30 members of Egypt’s Constituent Assembly threaten to walkout”, 8 November 2012, available at: <http://english.ahram.org.eg/NewsContent/1/0/57537/Egypt/0/-members-of-Egypt-s-Constituent-Assembly-threaten-w.aspx> [accessed 28 August 2018].

<sup>266</sup> Author Interview with Mohamed Abdel Alim Dawoud, Cairo, 17 August 2014.

<sup>267</sup> Author Interview, Mohamed Mohi El-Din, Cairo, 10 August 2014. See also Daily News Egypt, “Abdel-Maguid: ‘I believe we will have a constitution ready to put to a public referendum within six weeks to two months’”, 30 July 2012, available at: <https://dailynewsegypt.com/2012/07/30/abdel-maguid-i-believe-we-will-have-a-constitution-ready-to-be-put-to-a-public-referendum-within-six-weeks-to-two-months/> [accessed 29 August 2018]; and El-Din, G.E., “Debate intensifies over fundamental rights and freedoms in Egypt new constitution”, Ahram Online, 1 September 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/51711/Egypt/Politics-/Debate-intensifies-over-fundamental-rights-and-fre.aspx> [accessed 21 August 2018].

constitution, and the process of determining it, intensified between September and October 2012. On 12 October, FJP's critics filled the streets of Cairo on the occasion of President Morsi's first one hundred days in office and to protest Islamist domination of the CA. They clashed with Morsi's supporters, resulting, according to the New York Times, in "the bloodiest conflict between the two sides" since the beginning of the revolution.<sup>268</sup> At the beginning of November, non-Islamists once again threatened to leave the constitution-drafting body.<sup>269</sup>

### *New Constitution-making Channels*

Several initiatives emerged in this context to bridge differences. According to a deputy from the non-Islamist Ghad Al-Thawra Party, an informal, "problem-solving committee", sometimes referred to as a "consensus committee", emerged from within the CA and was composed of both deputies and leaders of political parties and civil society representatives not previously involved in the Assembly. The deputy described its work as "effective", with the committee able to resolve "many problems easily". The exception, he claimed, was the controversial issue of equality between men and women, and Article 219 of the constitution, which specified what principles of Islamic sharia were relevant to the constitutional order.<sup>270</sup> However, it is unclear who exactly participated in this initiative. The "problem-solving committee" was accompanied by

---

<sup>268</sup> Kirkpatrick, D.D., "Opponents and Supporters of Egypt's President Clash", New York Times, 12 October 2012, available at: <https://www.nytimes.com/2012/10/13/world/middleeast/mohamed-morsis-critics-and-backers-clash-in-cairos-tahrir-square.html> [accessed 29 August 2018].

<sup>269</sup> Ahram Online, "30 members of Egypt's Constituent Assembly threaten to walkout", 8 November 2012.

<sup>270</sup> Author Interview, Mohamed Mohi El-Din, Cairo, 10 August 2014. See Chapter 5 for more detail on these discussions.



another body that emerged in October 2012, the Advisory Committee, which was composed solely of experts on constitutional law and university professors (Farouk, 2013, p. 27).<sup>271</sup> Its creation was welcomed by non-Islamists, who originally preferred some of its members to become CA deputies. However, complaining they were never actually consulted by the deputies, most of the experts soon resigned (2013, p. 27).

In addition, informal deliberations took place outside of the CA's remit in November. Among them, meetings with heads of political parties, including those that had left the Assembly earlier, were organized by both President Morsi and the CA leadership in order to encourage compromise on the constitution. Participants, however, diverged on how successful the meetings were in bridging differences, and what leverage they had on the text of the constitution officially drafted in the CA.<sup>272</sup>

Despite these efforts, disagreement about the text continued, especially between non-Islamists and the Salafist parties. Eventually, as the FJP's non-Islamist opponents grew increasingly dissatisfied, with never ending procedural and content-related problems, approximately one third of them announced their withdrawal from the CA in mid-November.<sup>273</sup> As they refused to return following the issuing of the

---

<sup>271</sup> Ahram Online, "Egypt's Constituent Assembly wins back four liberal members", 29 September 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/54204/Egypt/Politics-/Egypst-Constituent-Assembly-wins-back-four-liberal.aspx> [accessed 29 August 2018].

<sup>272</sup> Ahram Online, "Morsi, political forces agree on 90% of the draft constitution: Spokesman", 4 November 2012, available at: <http://english.ahram.org.eg/NewsWorldCup/2018/57166.aspx> [accessed 21 August 2018]; Shukrallah, S., "Brotherhood scrambles for consensus with opposition on draft constitution", Ahram Online, 6 November 2012, available at: <http://english.ahram.org.eg/NewsContent/1/140/57232/Egypt/The-Balance-Sheet/Brotherhood-scrambles-for-consensus-with-oppositio.aspx> [accessed 21 August 2018].

<sup>273</sup> El-Din, G.E., "Salafits and liberals exchange fire over Egypt's draft constitution", Ahram Online, 22 October 2012, available at: <http://english.ahram.org.eg/NewsWorldCup/2018/56275.aspx> [accessed 29 August 2018]. See Chapter 5 for more information about the withdrawals and the reasons behind them.

controversial Constitutional Declaration by President Morsi on 22 November, some of the missing deputies were simply replaced by new people.<sup>274</sup> Thus transformed, the CA adopted the constitution seven days later, on 29 November 2012. In the remainder of this chapter, I evaluate how formally and substantively inclusive the constitution-making design was in Egypt, and how key protagonists themselves conceived inclusiveness.

### 6.2.2 Formal, Substantive, and Perceived Inclusiveness

To assess inclusiveness in the case of the constitutional change in Egypt after 2011, I focus primarily on the second CA. This is because the second Assembly continued to play the role of the main forum where the constitution was debated, and approved, throughout the process. In comparison, the first Assembly had little influence on the constitution as it was dissolved soon after its creation. The analysis that I present below reveals that the substantive inclusiveness of constitution-making design was undermined particularly by the low margin required for the passage of the constitution. In addition, both the involvement of parties of the anti-Mubarak coalition in constitution-making, and their capacity to modify the text of the constitution, was reduced, not by other aspects of the design, but especially by their withdrawal from the CA.

---

<sup>274</sup> See Mihaila, L., “The 85 people deciding the fate of Egypt”, Daily News Egypt, 4 December 2012, available at: <https://dailynewsegypt.com/2012/12/04/the-85-people-deciding-the-fate-of-egypt/> [accessed 28 August 2018].

### *Formal Inclusiveness*

Were all the major parties of the anti-Mubarak coalition granted membership in the main constitution-making body, in this case the second Constituent Assembly? Judging by the selection criteria settled on by the political parties, the constitution-making design was meant to be formally inclusive (Table 5). This was ensured by the method used for the selection of the CA's members, which did not rely on popular election results but on parliamentary appointment. This design, however, was never put in practice. In protest at the process through which those who were to draft the constitution were chosen, several non-Islamist parties resigned their CA membership in June 2012 before its very first session could take place.

This first wave of the boycott involved three major non-Islamist parties of the anti-Mubarak coalition, the liberal FEP, the centre-left ESDP, and the leftist and Arab nationalist Karama Party. While together they controlled only 7.4 % of the seats in the People's Assembly (PA) (Table 2), this was nearly half of the total seat share held by all secularist parties combined.<sup>275</sup> Crucially, as many as 20.7 % of voters supported Hamdeen Sabahi, the leader of the Karama Party, in the first round of the 2012 presidential ballots, giving an indication that the party's popularity was potentially more significant than its seat share in the PA might suggest. This fact makes the party's absence from the CA even more problematic. Following the withdrawal of these parties, apart from the liberal Wafd Party with its 7.6 % of seats in the PA, only individual personalities related to the non-Islamist bloc, and members of parties with less than 2 % of the PA seats remained in the CA.<sup>276</sup> Neither were members from these

---

<sup>275</sup> Together, all the secularist parties controlled 18.6 % of seats in the PA. See Chapter 4 for details.

<sup>276</sup> See the breakdown of the composition of the CA, as of 12 June 2012. Ahram Online, "Official: The 100 members of Egypt's revamped Constituent Assembly", 12 June 2012, available at:

three parties among the figures nominated by parliament in October to replace the deputies who had withdrawn.<sup>277</sup> The CA's formal inclusiveness, already curtailed by these absences, suffered further after the second round of withdrawals began in November 2012. At that point, with very few exceptions, the remaining non-Islamists of the anti-Mubarak coalition resigned.<sup>278</sup>

The fact that these parties were not present in the CA considerably decreased the degree of formal inclusiveness, even though it was not a result of exclusive constitution-making design, but of decisions made by the leadership of the parties under the particular political context that had evolved. The parties that withdrew were, nevertheless, involved in constitution-making through other channels. The Karama Party, ESDP and FEP representatives reportedly participated in meetings organized by President Morsi and the CA leadership in November 2012 with the aim of overcoming conflicts.<sup>279</sup> The meetings, however, ceased as Morsi published his controversial Constitutional Declaration. After that date, non-Islamist parties of the anti-Mubarak coalition united in the NSF and moved to boycott all gatherings organized by the FJP, including those relevant to the constitution, as I pointed out in Chapter 5.

---

<http://english.ahram.org.eg/NewsContent/1/64/44696/Egypt/Politics-/Official-The--members-of-Egypt-s-revamped-Constitue.aspx> [accessed 29 August 2018].

<sup>277</sup> El-Din, G.E., "Egypt's liberal forces take aim at draft constitutional articles", Ahram Online, 16 October 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/55781/Egypt/Politics-/Egypt-s-liberal-forces-take-aim-at-draft-constituti.aspx> [accessed 29 August 2018].

<sup>278</sup> El-Din, G.E., "The constitution-drafting assembly faces fatal threats", Ahram Online, 19 November 2012.

<sup>279</sup> Ahram Online, "Morsi, political forces agree on 90% of the draft constitution: Spokesman", 4 November 2012. Shukrallah, S., "Brotherhood scrambles for consensus with opposition on draft constitution", Ahram Online, 6 November 2012.

### *Substantive Inclusiveness*

The term substantive inclusiveness relates to the actual influence that political parties had on the shaping of the text of the constitution. This degree of influence depends on the party's electoral popularity as well as on the constitution-making design. The criteria that I laid down in Chapter 3, and employed in the Tunisian case study to assess whether a constitution-making design promoted substantive inclusion, were: proportionality, internal organization of a constituent assembly, and approval mechanisms. I had to alter these criteria slightly to make them applicable to the Egyptian case.

This concerns, first of all, the measurement of (dis)proportionality, which in the case of Egypt refers to the difference between the parties' seat share in the 2011/12 elections to the People's Assembly and the number of seats they were assigned in the CA. This approach is, however, complicated by the nature of Egypt's main constitution-making body. The CA brought together political party members as well as actors with less clearly delineated ideological affiliations. Assessing proportionality with the first, partisan, component of the CA is straightforward. With regard to non-partisan members, while we may sometimes be able to guess their background, from such indicators as whether they were known for having ties to the Islamist or secularist camp, the problem with this kind of labelling is that the information upon which the labelling has been based may be inaccurate. Even if non-partisan members were indeed closer to one camp than another, this might not have influenced their decisions to any significant extent. This is because unlike in the case of partisans, no organization could enforce a certain voting pattern on them. Bearing these limitations in mind, I include a limited assessment of the relationship of these members to the Islamist or non-Islamist camp in order to provide a general guide to their potential

attitudes but such conclusions should, nonetheless, be read with caution. The second adjustment to the criteria relates to the internal organization of the CA, which I was unable to assess accurately due to the lack of available information on this constitution-making body, combined with the limited number of qualitative interviews that I was able to undertake in Egypt. This criterion is, therefore, excluded from the empirical assessment in this case.

**Proportionality:** At the time when the parties settled on the criteria to guide the selection of CA deputies, the Assembly's make-up was such that there were more Islamists than their secular-leaning opponents. Together, the FJP, the Nour Party, a political wing of the Islamic Group, the Building and Development Party, and the Wasat Party were allocated 66.7 % of the seats reserved for MPs (Table 5). Liberal and leftist parties were given 33.3 % of these seats. This breakdown, however, does not reflect a constitution-making design that discriminated in favour of Islamist parties. They were simply far more popular than secularists among the Egyptian electorate at the time. Alone, the FJP claimed 45 % of the seats in the PA. If we add the gains by the electoral alliance led by the Salafi Nour Party, as well as the Wasat Party and the Islamic Labour Party, the total secured by Islamist-leaning parties reaches 71.9 % of the PA seats (Table 2), and this percentage was even higher in the upper chamber. The limited support for non-Islamists during the elections to the PA, where their seat share was only 18.6 %, translated into a very limited number of seats on the CA, at least when considering its partisan component.

The remaining 61 seats reserved for non-MPs went to a wide range of social and political groups: representatives of political parties, judges, public figures, young revolutionaries, syndicates and state representatives, including the army, police, and the Ministry of Justice, and representatives of the Christian churches and the Islamic

religious authority, Al-Azhar (Table 5). Among them were people aligned both to the Islamist or secularist camps, as well as many others whose affiliations cannot be reduced to the binary distinction between Islamists and secularists. Some estimates are, nevertheless, available but for the reasons indicated above should be treated with caution. Drawing on publically available information about the CA deputies and on interviews with two CA members, one from the Islamist and one from the non-Islamist camp, the report produced by the Arab-West Report think-tank close to the Coptic religious minority, enabled an identification of the 100 chosen to draft the constitution as either Islamist or non-Islamist leaning (Hulsman et al., 2013).<sup>280</sup> Their estimate is not based on the selection criteria agreed in June 2012, but on the full list of drafters as nominated by parliament. In other words, people who resigned in the first wave did not figure on the list with which they worked.

According to their report, 35 deputies were members either of the MB, FJP or Salafist parties, while an additional 18 were “independent Islamists.” The Islamist camp thus controlled 53 % of the CA or, alternatively, 60 % if we accept the calculation of a deputy from the liberal Wafd Party, George Messiha, who identified seven additional deputies as having a “clearly Islamist orientation” (Hulsman et al., 2013, pp. 40-5). It is unlikely the report would underestimate the Islamist component due to the background of the think-tank that produced it, and because the general sentiment among the liberal, non-Islamist forces at the time was that the CA was dominated by Islamists. If their assessment is correct, it contradicts the notion that Islamist control of the Assembly was absolute. The Islamists’ pre-eminent position in

---

<sup>280</sup> The information about the background of the Arab West Report comes from two different sources who have done their internship there. See also their website, Arab West Report, “Mission statement”, available at: <https://www.arabwestreport.info/en/mission-statement-0> [accessed 29 August 2018].

the CA reflected their electoral popularity, and it can be argued that they were actually underrepresented compared to their electoral showing. This is even more telling because the figure comes from the period after the first wave of withdrawals from the Assembly in June 2012, leading to a reduction in the ranks of the non-Islamists.

However, the picture becomes more opaque if we focus exclusively on substantive inclusion of parties of the anti-Mubarak coalition, as their withdrawals decreased their control over the wording of the constitution. After June 2012, this was the case for the FEP, ESDP, and the Karama Party. Both President Morsi and the CA leadership sought to make up for their absence by organizing ad-hoc meetings to negotiate constitutional provisions outside the CA's brief during November, as I explained above. Nevertheless, it remains unclear to what extent these channels affected the work undertaken in the CA and, ultimately, the constitution itself. Crucially, the influence of non-Islamists on the constitutional negotiations diminished almost completely in mid-November 2012, when most of the remaining deputies from this camp decided to leave the CA. Around a half of the deputies that withdrew were then replaced by other individuals, mostly Islamist-leaning, while other seats were left vacant. At the point the Assembly voted on the constitution, it consisted of 85, not 100 members, and the non-Islamist element of the anti-Mubarak coalition was almost entirely absent (Hulsman et al., 2013, p. 44).<sup>281</sup>

**Approval Mechanisms:** The capacity of political parties to shape the constitution further depends on the mechanisms that are in use for approving the final negotiated text. The CA's internal rules envisaged that the constitution would be

---

<sup>281</sup> The only members of the non-Islamist element of the anti-Mubarak coalition consisted of one deputy from the Wafd Party, and three members of the Ghad Al-Thawra Party. See Mihaila, L., "The 85 people deciding the fate of Egypt", Daily News Egypt, 4 December 2012.



approved by a “gradual majority”. This meant that each article had to be passed by a two-thirds majority (67 %) in the first round of voting. If the article was not accepted in the first round, drafters were given an extra 48 hours to negotiate, after which its approval hinged on a simple majority plus seven votes (57 %).<sup>282</sup> If we take seriously the estimate of the distribution of seats in the CA between the Islamist and non-Islamist camps presented above, it can be seen that the Islamist parties were very close to passing the constitution on their own. The modest size of the majority required for the approval, half of the CA plus seven votes, made it difficult for any smaller party to influence the wording of the constitution or to block articles to which it was diametrically opposed.

In addition, as I have argued in Chapter 3, smaller parties may be able to use other safeguarding mechanisms to prevent a situation in which a document so important to the functioning of a democratic political system, such as a constitution, is written by a temporary majority. In Egypt, following the Assembly’s approval of each of the constitution’s articles, the whole document was submitted to a popular referendum where a simple majority of voters was required for the ratification of the constitution. This made it a blunt instrument for smaller parties disenchanted with the text of the constitution.

Having reviewed two critical components that shape the extent to which a constitution-making design promotes substantive inclusion, proportionality and approval mechanisms, it is possible to conclude that there were considerable limits to inclusiveness in the case of Egypt. Available evidence suggests that the Islamist faction was not overrepresented but actually underrepresented in the CA compared to

---

<sup>282</sup> Daily News Egypt, “Abdel-Maguid: “I believe we will have a constitution ready to put to a public referendum within six weeks to two months”, 30 July 2012.

the percentage of votes gained by the relevant parties in the PA 2011/12 elections. However, the low margin needed for the approval of the constitution made it difficult for any smaller party to meaningfully contribute to the constitutional debate, and did not allow for the sharing, dispersal, and limitations on power that characterizes inclusive constitution-making design. Before I close this chapter with a comparison of the constitution-making designs used in Egypt and Tunisia, I consider the perceptions the leading members of the key Egyptian parties had of inclusiveness.

### *Parties' Perceptions of Inclusiveness*

Given the above analysis, it comes as no surprise that the political parties of the anti-Mubarak coalition held different, and often conflicting, views on the ideal design of constitution-making. In particular, their opinions varied on the question of how much influence over the constitution a political tendency should enjoy in relation to its popular support. The whole confrontation about the first and second CA was, essentially, a dispute about substantive inclusiveness.

The FJP, having emerged victorious from the recent elections, favoured a majoritarian approach to constitution-making. This is, perhaps, best illustrated by the arguments of the FJP's original presidential candidate, Khairat El-Shater,<sup>283</sup> who at the time of the controversies around the first CA's composition noted that:

---

<sup>283</sup> Shater, one of the most influential members of the Muslim Brotherhood, had previously been disqualified from the 2012 presidential election by the electoral commission. See Fadel, L., "Disqualified Egyptian candidate says military rules don't intent to cede power", Washington Post, 18 April 2012, available at: [https://www.washingtonpost.com/world/middle\\_east/egypts-disqualified-presidential-candidate-says-military-rulers-have-no-intention-of-handing-over-rule/2012/04/18/gIQAt95UQT\\_story.html?noredirect=on&utm\\_term=.3feb2f05bbd1](https://www.washingtonpost.com/world/middle_east/egypts-disqualified-presidential-candidate-says-military-rulers-have-no-intention-of-handing-over-rule/2012/04/18/gIQAt95UQT_story.html?noredirect=on&utm_term=.3feb2f05bbd1) [accessed 29 August 2018].

...the FJP has more than a 50 % majority in the People's Assembly and the Shura Council [upper parliament's chamber], and there, if it was about forming an electoral list, the Brotherhood could select 100 members [of the CA] overnight and no one would be able to do anything about [it], not in terms of voting and electing. Nevertheless, the FJP is the one that chose a lot of liberals and leftists for the lists, including Wahid Abdel Maguid, Amr El-Shobaki, and Amr Hamzawy... The existence of these figures [in the CA] proves that the FJP believes in involving the largest possible range of views.<sup>284</sup>

Meanwhile, less electorally popular non-Islamists called for a more inclusive method, which would have guaranteed them more leverage over the constitution. The fact that they criticized the CA for its "Islamist monopoly" would suggest that they saw the drafting body as not being proportionate to the popular support won by the various political forces. However, their view is contrary to the findings presented in this chapter which indicate that Islamists were underrepresented in the CA rather than the converse.<sup>285</sup> In a similar vein, when we follow the media representation of the discussion of the CA selection criteria, we learn that liberals and leftists supported an equal ratio of Islamist and non-Islamist deputies in the CA, seeking to strengthen their

---

<sup>284</sup> Al-Ahram Daily, "Interview with Khairat El-Shater", Ahram Online, 7 April, available at: <http://english.ahram.org.eg/NewsContentPrint/1/0/39511/Egypt/0/Interview-with-Khairat-ElShater.aspx> [accessed 15 August 2017].

<sup>285</sup> I should, however, note that apart from criticizing the alleged Islamist monopoly in the CA, non-Islamist political parties and civil society groups also criticized the lack of representation of women and the young. See e.g. El-Gundy, Z., "Liberals, leftists stage 2nd walkout from Egypt's Constituent Assembly," Ahram Online, 11 June 2012; Ahram Online, "Egypt's Constituent Assembly wins back four liberal members", 29 September 2012; and Shukrallah, S., "Brotherhood scrambles for consensus with opposition on draft constitution", Ahram Online, 6 November 2012.

position to a point well above that which would have been a truer reflection of their electoral popularity. When they were not granted such control over the constitution, they decided to boycott the Assembly.

As Ahmed Said, the leader of the FEP, which left the CA in June 2012, expressed it:

When it comes to the constitution, there are basic points that we all agree upon. And the points of difference were very well known from the beginning. So, if you have a majority, then you know very well that you're going to get what you want. And that's why we disagreed with the selection criteria. It wasn't about [content-related] disagreements. We just saved the time, instead of going inside [the CA] like Amr Moussa, struggling for two to three months and after this time finding out that they [the Islamists] are doing what they want. We had more of a vision when we decided: let's get out [of the CA], it's not going to continue like that.<sup>286</sup>

However, according to liberal politician Amr Hamzawy, the real aim of the FJP's opponents during negotiations about the CA selection criteria was not to control as many seats as Islamists but, rather, to make sure there would be a like-minded one third of deputies who could, together, block articles relating to state identity and the relationship between religion and the state. As he put it:

It was not that we wanted 50 [seats] and we were unhappy about the 50 [seats] being divided [between non-Islamist parties and non-partisan representatives]. It was about a blocking third... We were going to have a blocking third with the churches, Al Azhar

---

<sup>286</sup> Author Interview with Ahmed Said, Cairo, 12 August 2014.

representation, state institutions representation, should – and this was our reading back then – Salafists [seek to] extrapolate the Article 2 into additional articles and run around making everyone crazy. What happened was that Ikhwan [the MB] overruled the special majority rule for agreeing on articles – it was not there. It was a simple majority vote at the end of the day... The focus on the criteria on the secular side was very much related to the fact that we needed to make sure that we were not going to be outmanoeuvred.<sup>287</sup>

Indeed, as I have argued above, given the low margin necessary for the approval of the constitution, controlling even a third of the CA was rendered meaningless. If we follow this logic, asking for an equal number of Islamists and secularists in the CA could have been a negotiation tactic, rather than a serious demand.

### 6.2.3 Summary

The evaluation of the constitution-making design that guided the processes of producing the constitution in Egypt, initiated by the popular uprising in 2011, revealed the limits to both formal and substantive inclusiveness. Not all of these limitations reflected a deficiency on the design side. The stronger presence of the Islamists in the CA compared to secularists, at first, only reflected the electoral fortunes of the Islamists. The Islamist tendency was represented in the CA not only by the FJP but also by various strands of Salafist parties, the size of whose voter base surprised observers after the 2011/12 PA elections. In comparison, non-Islamists of the anti-Mubarak coalition were feeble and fragmented, and the low number of voters they mobilized for the PA elections translated into their limited membership in the CA.

---

<sup>287</sup> Author Interview with Amr Hamzawy, Prague, 8 October 2017.

Non-Islamist involvement in the process and their ability to shape the constitution was then reduced by their withdrawal from the CA. While June 2012 saw walkouts by members of three important parties of the anti-Mubarak coalition, the FEP, ESDP, and the Karama Party, in protest at the CA selection criteria, the remaining non-Islamists left the drafting body in response to President Morsi's controversial declaration in November of the same year, leaving the Assembly almost entirely in the hands of Islamists.

The criticism and boycott that the Islamists' opponents directed towards the CA were, however, not unfounded. I have found that the constitution-making design did indeed considerably hinder the ability of smaller parties to amend the text of the constitution or to block articles that they opposed, such as Article 219 which specified how sharia would be interpreted. However, contrary to the views expressed by the CA's critics, the problem does not seem to lie in the lack of proportionality. Instead, substantive inclusiveness was negatively affected by the low proportion of votes necessary in the CA to approve the constitution. This situation made it easy for the temporary majority to approve the wording it preferred. Had non-Islamists controlled more seats in the drafting body, even that might not have given them enough numbers to block contentious provisions, as that required the support of as many as 43 % of CA deputies, a figure that was beyond their reach given electoral reality.

### **6.3 Conclusion: Inclusiveness of Constitution-making Design and Constitutional (Dis)Agreement in Tunisia and Egypt**

This chapter has explored the rules and mechanisms that guided how protagonists of constitutional change were selected, and how they debated and approved the new charters in Tunisia and Egypt after bottom-up protests removed their long-standing

dictators in January and February 2011. The chapter has illustrated how the design of constitution-making processes in both cases allowed for formal inclusion in the sense that all the major parties of the anti-authoritarian coalitions were members of the main constitution-making channels. The designs, however, varied in the degree to which they promoted substantive inclusion. The difference concerned specifically the mechanisms that regulated what proportion of the constituent assemblies was sufficient to pass the constitution. Unlike Tunisia, where the whole text had to win the support of two thirds of the NCA, making it difficult for any party to push through its own constitutional vision without consulting parties that might not share that political perspective, smaller parties in Egypt could only prevent the majority political tendency from passing their preferred text if they together controlled 43 % of the CA. The constitution-making design in Tunisia promoted sharing, dispersal, and limitations to power, and was therefore inclusive. The design adopted in Egypt failed to achieve that level of inclusivity. I have also concluded that while the weaker, non-Islamist parties in Tunisia gained more leverage over the text in the last phase of the process, the leverage of their counterparts in Egypt decreased at that point. Did the differences in the constitution-making design influence the different outcomes of the constitution change processes?

The analysis of the Tunisian case clearly reveals that two elements of the design in particular constrained the capacity of any political faction or bloc to fashion its own constitution. This was achieved, on the one hand, by the use of a proportional representation electoral system and the HQLR, which led to a situation whereby the vote share won by each party in the 2011 elections was translated into their NCA seats in a highly proportional manner, and smaller parties were, therefore, not underrepresented in relation to their electoral popularity. On the other hand, the fact

that the NCA could enact the constitution only if two thirds of its members voted in favour meant that no party could push through its own constitutional agenda alone. A new constitution could only be adopted if a coalition composed of multiple parties supported it. Even though the electorally popular Ennahda maintained the upper hand in the constitution-making process, smaller parties were not unimportant thanks to the constitution-making design, as one third of them could block a problematic draft. In contrast, the low level of margin required for the approval of the constitution in Egypt gave the stronger, Islamist bloc little incentive to compromise and reach out to opponents. I, therefore, argue that the inclusive design encouraged agreement on the new constitution in the Tunisian case. The framework implemented in Egypt, which provided for limited substantive inclusiveness, could not play this same role. Instead, the conflict over the constitution-making design only exacerbated the tensions between the Islamists and their non-Islamist rivals.

However, on its own, the inclusive design does not explain why broad agreement on the constitution evolved in Tunisia. As we have seen, the constitution change process entered a phase of impasse after what was intended to be the final draft sparked outrage among many deputies and, ultimately, when non-Islamists left the Assembly after the death of one of the deputies in July 2013. Furthermore, despite the highly inclusive design, secularists criticized what they saw as the majoritarian logic adopted by the NCA where Ennahda, along with other conservative deputies, retained a more influential voice than others. The agreement on the constitution was secured after non-Islamist parties were given almost equal leverage over the text of the constitution as Ennahda itself did. This situation, however, was only partially a result of the constitution-making design and the changes made to it.



The new constitution-making body that was introduced in Tunisia in June 2013, the Consensus Commission, certainly increased the ability of the weaker secularist parties to shape the text by allowing them an overrepresentation, while underrepresenting Ennahda. It was the framework of the Quartet-led National Dialogue, where the distribution of power between the forces was even more favourable to the secularist opposition, that enabled this political wing to force even more concessions. The question remains as to what factors ultimately led to the situation in which the secularist opposition parties, who had fared much worse in the 2011 polls than Ennahda, managed to enhance their negotiating position to the extent they did. It can be argued the CC, whose name suggests it was established to promote compromise, was an outcome of these other factors, an instrument that enabled parties to negotiate on points of conflict, rather than actively constraining Ennahda and hence shaping the agreement. I revisit these issues in Chapters 7 and 8.

Neither can the lack of substantive inclusion in Egypt fully account for the constitutional disagreement that was so clearly confirmed during the December 2012 referendum, when the constitution was opposed by a coalition of non-Islamist parties. I have argued in Chapter 5 that the FJP was, nevertheless, inclined to develop compromises on some of the most contentious issues which divided Salafist and non-Islamist parties, such as religion-state relations and to the incorporation of sharia into the constitutional framework. In addition, the FJP worked towards involving non-Islamists in the constitution-making process through ad-hoc created negotiation channels and bodies upon their withdrawal from the CA. These efforts proved in vein as President Morsi issued the Constitutional Declaration, which interrupted the constitution-making process. The decision of the FJP to rush the constitution forward, in spite of opposition to the document voiced by non-Islamists, was then more than

likely woven together by a number of diverse factors which are beyond the scope of this investigation, including the complicated context of transition (see Chapters 4 and 5). That the party could act in such a way, however, was partially because the constitution-making design effectively lacked any barriers that would have protected the minority positions.

This chapter, therefore, shows that while inclusive constitution-making design can encourage constitutional agreement, it cannot, on its own, guarantee such a positive outcome. Finally, the analysis highlights the importance of substantive inclusiveness, which speaks to the capacity of each party to influence the text of the constitution. The other type of inclusiveness, formal, which ensures that all the major parties of the anti-authoritarian coalitions are involved in constitutional debates can facilitate negotiations, as it did in the Tunisian case. This positive function of formal inclusion is, however, dependent on substantive inclusion. In Egypt, formal inclusion could have provided little benefit as non-Islamists, disenchanted with their very limited opportunities to shape the text of the constitution through the CA, withdrew from the drafting body before the talks had even started.

I argued at the beginning of this thesis in Chapter 1 that inclusiveness of constitution-making design should not be used as an explanation but rather itself be explained. In Chapter 7, I do exactly that when I inquire into the origins of the different constitution-making designs implemented in Egypt and Tunisia after the uprisings.

## **Origins of Constitution-making Design**

After the popular uprisings swept through Tunisia and Egypt, unseating the long-standing dictators, both societies embarked upon dismantling the constitutions that the years of authoritarianism had left behind and writing new, democratic ones. Only in Tunisia, however, did the constitutional change process produce a document that was embraced across the religious divide that, as demonstrated in Chapter 4, pitted loose alliances of Islamist and secularist parties against one another. The preceding chapter, Chapter 6, provided evidence that the constitution-making process followed in Tunisia was designed to promote both formal and substantive inclusion. It constrained stronger Islamist groups, Ennahda in particular, from pushing through their constitutional vision, while giving secularist parties, despite their electoral weakness, considerable sway over the shaping of the text. This finding suggests that the constitution-making design, and the way it ensured the inclusion of parties across the anti-Ben Ali coalition, played a role in fostering the broad constitutional agreement which culminated in January 2014, when the National Constituent Assembly deputies almost unanimously approved the document. The design implemented in Egypt included a major flaw in that it required only a small majority to secure the passage of the constitution. This allowed the electorally more popular Islamists to adopt their constitution despite the objections of the much weaker non-Islamists, thus undermining prospects for constitutional agreement. The question is: Why was the constitution-making design highly inclusive in Tunisia and not Egypt?

This chapter explores the origins of constitution-making designs in the two countries. This is, on the one hand, to enhance our understanding of how procedures that guide constitutional change emerge during democratization, and why some countries adopt designs more suitable for accommodating conflicting preferences for constitutional texts across significant political divides. On the other hand, this exploration is also a necessary step in the confirmation or refutation of the argument put forward in Chapter 6. That argument, which is in line with existing theoretical scholarship, hypothesised that the constitution-making design adopted in Tunisia constrained Islamist and conservative groups from unilaterally fashioning their preferred constitution. If the parties, whose actions the inclusive design was intended to constrain, were at the same time the ones responsible for determining these procedures, the constraining function of the rules and mechanisms that framed constitution-making might, in effect, be considerably reduced. In such a case, rather than assuming the explanation for constitutional agreement lay in the constitution-making design itself, the answer should be sought among factors that led the parties to establish that specific design in the first place.

This chapter considers three factors that I identified in Chapter 2 for their potential impact on the constitution-making design adopted during democratization and its inclusiveness. These are: (1) the availability of different types of design; (2) the distribution of power between parties of the anti-authoritarian coalition; and (3) the normative value the strongest parties placed on consensus and inclusion. First, parties of the anti-authoritarian coalition might not control how constitution-making unfolds and who gets to participate in the process, as these issues might be handled by interim governments, where they would have a little or no say. In addition, constitution-making design can also come about randomly in the unruly context of

transition. To probe availability, I sought answers to the following questions: Who made the decisions about the procedures that framed the constitution change processes? Were parties of the anti-authoritarian coalitions involved in the decision-making? And if so, were different types of procedural choices available to them?

Secondly, I considered if parties were in charge of setting the constitution-making design, what determined their decisions? In Chapter 2, I argued, following Lijphart (1977, pp. 55-61), that the existence of a multiple power balance among the parties, as opposed to a hegemonic situation or a dual balance of power where two groups were approximately equal in size, was more likely to generate an inclusive constitution-making process. I build on the findings of Chapter 4, where I assessed the distribution of power among the parties of the anti-Ben Ali and anti-Mubarak coalitions based on the electoral success of individual parties in the first democratic elections. I also assessed subsequent changes in that distribution as evidenced by the results of later elections and by electoral opinion polls. However, the constitution-making design and its inclusiveness may have been determined before the founding elections revealed the real standing of each of the parties. If that was the case, the parties' ability to tailor how constitution-making would proceed might have been restricted by the forums in which those decisions took place (Birch and Millard, 2002, p. 20). I explore this possibility. Third, and finally, an inclusive constitution-making process remains viable, even when an existing power configuration does not favour its emergence, if the parties that have most influence over the decisions place a normative value on consensus and inclusiveness. Normative motivations are, however, difficult to discern from strategic calculations and, as I argued in Chapter 3, partisans can always dress interests in the clothes of the "general good". I, therefore,

consider whether other than normative considerations were in play in cases where my interviews suggest the value-based explanation.

The empirical analysis presented in this chapter demonstrates that normative considerations were, in fact, not the factor that best explains the difference in the inclusiveness of the constitution-making designs adopted in Egypt and Tunisia. Instead, it suggests that decisions regarding the organization of the transition process and constitution-making, which were made soon after the revolutions, were more critical in setting the countries on different paths. In Tunisia, the Higher Authority for the Realization of the Objectives of the Revolution, Political Reform and Democratic Transition, where the choice of the electoral system to the NCA was shaped by a situation of a multiple balance of power, was the essential ingredient for establishing an inclusive constitution-making process. Meanwhile in Egypt, the Supreme Council of the Armed Forces entrusted the tasks of selecting members of the forthcoming Constituent Assembly and deciding on the CA's internal working mechanisms, to the parliamentary majority, thus reducing the prospects for an inclusive design emerging. In addition, the chapter reveals the endogenous nature of constitution-making design in both countries and argues that this condition reduces the power of the design-based explanation to account for constitutional (dis)agreements. The chapter starts with an inquiry into the origins of the highly inclusive design adopted in Tunisia, which is followed by an exploration of the case of Egypt where inclusiveness was limited.

### **7.1 Explaining the Origins of Inclusive Constitution-making Design in Tunisia**

This section explores the origins of the inclusive constitution-making design followed in Tunisia. I start the inquiry with a consideration of the decision to elect the NCA by popular election, and then move to the two aspects of constitution-making design that

I identified in Chapter 6 as most important in guaranteeing the inclusive process. These were, first of all, the employment of the proportional representation electoral system, and the Hare Quota with Largest Remainders in particular, which regulated the NCA elections, translating votes into seats in a highly proportional manner. The other crucial element of the constitution-making design was the decision that the constitution could only be enacted if a majority of two thirds voted in favour of its adoption. Next, I investigate the rationale behind the alternation in the constitution-making design and its degree of inclusivity which occurred during the final months of the process. In Chapters 5 and 6, I argued that the constitutional agreement only materialized after the secularist parties were given almost the same say on the text of the constitution as Ennahda, a situation that was, in part, an outcome of changes in constitution-making design, and specifically the introduction of the Consensus Commission. I, therefore, ask the question: Why was the CC installed? To reconstruct the myriad choices, motivations, and other factors that eventually played a part in the choice of constitution-making design, I build on a range of primary and secondary sources, including qualitative interviews.

#### 7.1.1 Deciding to Elect the National Constituent Assembly

The fact that Tunisians elected the NCA through a popular vote and tasked it with writing the constitution was a product of various processes that were set in motion as soon as Ben Ali fled the country on the eve of 14 January 2011. Two institutional paths found their supporters at the time, one of institutional continuity and another, a more radical break with the past. The former option, and one that was initially invoked, comprised keeping the 1959 Constitution, along with holding presidential elections as speedily as possible. It was supported by proponents of the outgoing regime who took

over the government following the ousting of Ben Ali (see Chapter 4), as well as a few of his opponents, most notably the PDP.<sup>288</sup> It was, however, the second vision that was eventually implemented, and was one that included elections to a constituent assembly.

Accounts that I gathered indicate that the idea of electing a constituent assembly emerged, early on, from the proposals of a group of academics, especially law professors, who were meeting at the time to find a means of deconstructing the old constitutional system.<sup>289</sup> It was based on the country's previous experience with writing its post-independence charter, although the 1950s process did not involve popular ballots.<sup>290</sup> This vision was supported by most of the opposition parties,<sup>291</sup> and by the labour union, the UGTT (Hmed, 2016, pp. 77-8). However, considering the grip the old regime elites had on government, this roadmap might not have been put into practice if it had not been for protesters who pushed the demand through during a major demonstration in front of the seat of government in the second half of February 2011.<sup>292</sup> Having conducted ethnographic research during what was known as the

---

<sup>288</sup> The PDP's Secretary General, Maya Jribi, quoted by the International Crisis Group in February 2011, defended the continuity scenario. She argued: "What happened is more than an intifada but less than a revolution, and puts us in a delicate intermediate phase through which we are forced in part to build on what came before... That means continuity, with a transition at the institutional level." See ICG (2011, pp. 15-6). However, it was an open secret in Tunisia at the time that the PDP flag-bearer, Ahmed Najib Chebbi, had serious presidential aspirations, and the party probably supported the continuity path for this reason.

<sup>289</sup> Author interviews with Chafiq Sarsar, law professor and member of the expert committee of the HA (3 November 2016, Tunis); and law professor and HA Spokesperson Ghazi Gherairi (9 November 2011, Tunis).

<sup>290</sup> Author Interview, Ghazi Gherairi, 9 November 2016, Tunis.

<sup>291</sup> Author Interview, Chafiq Sarsar, 3 November 2016, Tunis.

<sup>292</sup> Author Interview with Ghazi Gherairi, 9 November 2016, Tunis. See also an interview with an influential jurist, Yadh Ben Achour, for *Le Monde*. Mandraud, I., "La Tunisie va connaître de vraies



second Kasbah sit-in, Hmed (2016, p. 83, pp. 86-7) demonstrated that the demand for the establishment of a constituent assembly was universal among the protesters. Under pressure, on 23 March, Interim President Fouad Mebazza, who had served as president of the lower chamber in the parliament under Ben Ali between 1997 and 2010, issued a decree that dissolved parliament and heralded the election for the NCA.<sup>293</sup>

#### 7.1.2 Setting the Electoral System and Approval Mechanisms

The decisions that crucially shaped the inclusiveness of the constitution-making process, about the electoral system on the one hand, and the internal mechanisms that guided the NCA's work on the other, were made by two different bodies. The electoral system for the NCA was determined by the Higher Authority. The HA was an appointed body which acted as a parliament in the period between March 2011 and organization of the first democratic elections in October. It eventually grew to 155 members who were drawn not only from parties that previously opposed Ben Ali's regime, but also from national personalities, civil society organizations, the family members of martyrs, representatives of the regions, different occupations, academics and even those of the French diaspora.<sup>294</sup> The HA's expert committee, which included

---

élections libres", Le Monde, 20 April 2011, available at:

[https://www.lemonde.fr/tunisie/article/2011/04/20/la-tunisie-va-connaître-de-vraies-elections-libres\\_1510254\\_1466522.html](https://www.lemonde.fr/tunisie/article/2011/04/20/la-tunisie-va-connaître-de-vraies-elections-libres_1510254_1466522.html) [accessed 12 September 2018].

<sup>293</sup> Decree-law n° 2011-14, dated 23 March 2011 relating to the provisional organization of the public authorities. See Legislation.tn, "Décret-loi n° 2011-14 du 23 Mars 2011, portant organisation provisoire des pouvoirs publics", 23 March 2011, available at: <http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2011/2011F/020/TF2011142.pdf> [accessed 12 September 2018].

<sup>294</sup> For a full list of the HA members, see Leaders, "La liste complète des membres du Conseil de Haute Instance pour la réalisation de la révolution", 7 April 2011, available at: <http://www.leaders.com.tn/article/4773-la-liste-complete-des-membres-du-conseil-de-la-haute->

law scholars and political scientists, was in charge of drafting the electoral system and prepared two versions with different modes of scrutiny. One suggested a majority two round system and the other a proportional representation system using the highest average formula. According to one member of the expert committee, political science professor Asma Nouria, there was “a need for it [the as yet unelected NCA] to be representative and at the same time to make it impossible for one party to impose itself on others”. Consequently, the experts preferred the implementation of a PR system.<sup>295</sup> It was, however, not up to them but to the regular HA members to make the decision.

Based on different accounts, there was a general preference for a PR system among HA’s members. Building on transcripts of sessions that concerned the electoral law, Gobe (2016, p. 73) argued that most HA deputies associated the majority system with cronyism, corruption, vote-buying, and regionalism. Divisions, nevertheless, appeared on the type of PR system to be implemented. While Ennahda, at the time already leading in the polls,<sup>296</sup> preferred the highest average formula suggested by experts, additionally accompanied by a 5 % threshold for entry to the NCA, smaller parties favoured the Hare Quota with Largest Remainders (Gobe, 2016, p. 74). It was this method that the majority of HA members eventually voted for rather than the first option, a choice that affected positively the inclusive nature of the NCA. As Carey (2013) has shown, had the most commonly used highest average formula, the d’Hondt

---

[instance-pour-la-realisation-des-objectifs-de-la-revolution](#) [accessed 3 September 2018]. For more information on the HA, see Chapter 4.

<sup>295</sup> Authors Interview, 27 June 2014, Tunis.

<sup>296</sup> While there were considerable fluctuations in the results of the early polls provided by different companies, Ennahda was always at the top. See e.g. L’Obs, “Sondage : les Tunisiens méfiants mais optimistes”, 14 June 2011, available at:

<https://www.nouvelobs.com/monde/20110614.OBS5103/sondage-les-tunisiens-mefiants-mais-optimistes.html> [accessed 12 September 2018].

Divisor, which was the alternative suggested by Ennahda, been applied, Ennahda's NCA seat share would have been significantly greater, possibly giving the party an overall majority in the NCA.<sup>297</sup> In addition, since only four parties won more than 5 % of national support (Ennahda, CPR, Aridha Chaabia, and Ettakatol, see Table 1), if the 5 % threshold had been adopted as proposed by Ennahda, it is unlikely that we would have witnessed such a diversity of parties in the Assembly.

Available evidence suggests that the representatives of political parties in the HA were aware of how the different rules would affect them, and could, therefore, make informed decisions. Gobe's (2016, p. 74) review of relevant transcripts led him to argue that partisans from the radical left and other secular-leaning parties preferred the HQLR divisor because they knew it would benefit smaller parties. Interviews with the leading members of political parties, civil society actors and experts in the HA, conducted by Carey and colleagues (Carey et al., 2015) point in the same direction. Their reasoning, supported by the evidence they gained from the interviews they conducted, paints Ennahda as a self-interested actor seeking a method it knew would favour the party, and backtracking only because of the opposition from the remainder of the HA. The authors reached a preliminary conclusion that the selection of the particular electoral system was an outcome of the balance of power between the different political forces. That Ennahda was unable to push through its preferred system was because it was not strong enough. They argued that the party was

---

<sup>297</sup> By running an experiment using competing electoral formulas, Carey (2013, p. 7) found that the d'Hondt Divisor would have given Ennahda 69 % of the NCA seats rather than the 41 % it eventually won. See Chapter 6 for more detail on the role of the electoral system and the method of translating votes into seats, in particular, on the overall inclusiveness of the constitution-making design.

outmanoeuvred by “the healthy representation of smaller parties and of civil society actors” in the HA (2015, p. 23).

There are two caveats to this explanation. The first one relates to Ennahda’s motivations, where calculations, other than simple short-term power-seeking, might have played a role. According to constitutional law expert and HA member Ghazi Gherairi, the choice of electoral system was not the most important consideration for Ennahda. The party already had a lead in the polls and “so all the systems were good for them”. What he thought Ennahda really cared about was that “the elections really take place, and that they are honest and transparent”.<sup>298</sup> In this sense, Ennahda, which had been excluded from competing for political power for more than two decades, was ready to compromise because it understood that elections, as such, were more important than the number of seats it would win. This conclusion is also consistent with the previous findings of this thesis. In Chapter 5, based on interviews with Ennahda’s leading members, I stressed that during the constitutional negotiations, some of the concessions they made were motivated by longer-term considerations, and especially by a desire to prevent the return to government of the old regime. It is a reasonable conclusion that ill-advised efforts at pushing through electoral rules that others vehemently opposed could have antagonized even further non-Islamists who were already wary of Ennahda and, consequently, put their longer-term aspirations in danger.

The second caveat relates to the structure through which decisions about the electoral system were made. Notwithstanding their popularity, which was to be officially judged only by the forthcoming elections, political parties controlled an

---

<sup>298</sup> Author Interview with Ghazi Gherairi, 9 November 2016, Tunis.

equal number of seats in the HA, and their voices were further balanced by the presence of non-partisans. In such a setting, even if Ennahda wanted to ignore the smaller parties and impose its preferred electoral system, it was unable to do so. The existence of a situation of a multiple balance of power was not simply a result of Ennahda's weakness, but of the transition path that Tunisia took after Ben Ali's removal, and which led to the formation of the HA.

A different context surrounded the debates about the internal organization of the NCA, and about mechanisms for approving the national charter in particular. These issues were fixed by the newly elected NCA where the distribution of power was determined by voters and Ennahda won most seats. On 10 December 2011, deputies adopted a law, officially entitled the Provisional Organization of Public Authorities but generally known under the French acronym OPPP, which served as an interim constitution. Apart from organizing the legislative and executive power for the period until the NCA approved a finalized constitution, the document regulated the size of majority required for passing the constitution, determining that a vote in favour by two thirds of the Assembly's deputies was needed to enact the text.<sup>299</sup> The remainder of the Assembly's agenda was guided by the NCA's Rules of Procedure, adopted a month later, which regulated the conduct of constituent commissions including specifying that their membership should be determined "in proportion to the membership of the parliamentary groups and of independent members" in the NCA.<sup>300</sup> As we have seen

---

<sup>299</sup> See Article 3 of the OPPP. Guerfali, R., "Loi constitutionnelle n°6-2011 du 16 décembre 2011, relative à l'organisation provisoire des pouvoirs publics", Nawaat, 14 February 2013, available at: <https://nawaat.org/portail/2013/02/14/traduction-fr-loi-constitutionnelle-n6-2011-du-16-decembre-2011-relative-a-lorganisation-provisoire-des-pouvoirs-publics/> [accessed 28 August 2018].

<sup>300</sup> See Article 42 of the Rules of Procedure. ConstitutionNet, "The Tunisian National Constituent Assembly. Rules of Procedure", International IDEA, 16 December 2011, available at:

in Chapter 6, the decision to approve the constitution by a two thirds majority was especially important for limiting and dispersing power over the text of the constitution, features that characterize an inclusive constitution-making design.

There are very few reliable accounts of these early debates. This is because these decisions were made before civil society organizations began to regularly monitor the NCA's sessions. My interviewees acknowledged they had little recollection of these events. What we do know, however, is that the OPPP, which regulated constitution approval mechanisms, was voted by 141 of 217 deputies. This figure is close to two thirds of the Assembly and shows that only 37 deputies voted against the proposal.<sup>301</sup> The controversial parts of the law, as noted by journalists who followed the debates, related to the powers of the president, not to the procedures for adopting the new constitution.<sup>302</sup> The intentions of the party that fared best in the 2011 elections, Ennahda, in relation to the criteria to be used for the adoption of the constitution are not known. Yet even if Ennahda wished to choose a different method involving a lower margin, it could not do it. Not having a majority in the NCA, as it controlled only 41 % of seats, Ennahda needed partners to pass the OPPP. Meanwhile, the rest of the NCA was composed of smaller parties, each of them controlling below 15 % of the NCA seats. Again, there was a situation of a multiple balance of power in the NCA.

---

[http://www.constitutionnet.org/sites/default/files/constituent\\_assemblys\\_rules\\_of\\_procedure\\_-\\_english-final.pdf](http://www.constitutionnet.org/sites/default/files/constituent_assemblys_rules_of_procedure_-_english-final.pdf) [accessed 27 August 2018].

<sup>301</sup> See Business News, "La Tunisie dotée d'une 'mini constitution'", 11 December 2011, available at: <http://www.businessnews.com.tn/La-Tunisie-dotée-d'une-«-mini-constitution-»,520,28124,1> [accessed 8 September 2018].

<sup>302</sup> Thomson, D., "Tunisie: Assemblée constituante adopte la loi d'organisation des pouvoirs publics", RFI Afrique, 11 December 2011, available at: <http://www.rfi.fr/afrique/20111211-tunisie-assemblee-constituante-adopte-loi-organisation-pouvoirs-publics> [accessed 8 September 2018].

Parties adjusted the constitution-making design during the last stage of constitutional change process when they created the CC, giving smaller parties yet more influence over the text. What stimulated these changes?

### 7.1.3 Changes in Inclusiveness: Consensus Commission

The Consensus Commission was created following the controversy that erupted around the fourth draft of the constitution published on 1 June 2013. According to the Carter Center (2014, p. 39), there was no doubt that the draft was supposed to be the final one. After the NCA President and General Rapporteur officially signed it during a press conference, deputies moved to a general discussion of its contents at the plenary sitting, a step preceding the article-by-article vote. Igniting heated controversy for not accurately reflecting the work of the constituent commissions, the draft was rejected by opposition deputies, and even some of the government deputies from Ettakatol and the CPR.<sup>303</sup>

The critical reaction to the 1 June draft coincided with other pressures on Ennahda and the Assembly. As soon as one year had passed after the NCA election, the legitimacy of the drafting body was constantly called into question by its critics, most notably the leader of Nidaa Tounes, Beji Caid Essebsi, whose popularity was growing quickly.<sup>304</sup> The Ennahda-led government faced additional criticism for the deteriorating economic and security situation (Gobe and Chouikha, 2014). This was reinforced after the death of a left-wing politician, Chokri Belaid, in February 2013, resulting in a cabinet reshuffle and more intense calls for the NCA to conclude the

---

<sup>303</sup> I discuss the critical reaction to the draft in more detail in Chapters 5 and 6.

<sup>304</sup> For the changes in the balance of power throughout the constitution-making process, see Chapter 4. I explain why the legitimacy of the NCA was undermined one year after its election in Chapter 6.

constitution change process (Gobe and Chouikha, 2014, pp. 3-5). A few months before the launching of the CC, in spring 2013, these growing tensions lead President Marzouki to initiate talks between rival political parties and civil society, one of the first national dialogues. The intention was to discuss the constitution in a different, and perhaps more inclusive, setting than that provided by the constituent commissions. Although this did not materialize as some of the parties decided not to participate, the dialogue saw Ennahda compromising on several controversial points, including the relationship between legislature and executive.<sup>305</sup>

In June, tensions between government and opposition were further exacerbated by the situation in Egypt, where the Freedom and Justice Party was facing mounting opposition in the form of the Tamarod, or Rebel, movement, which gathered signatures for a petition aimed at removing President Morsi from office.<sup>306</sup> That similar voices were gaining momentum in Tunisia is demonstrated by the launching of a Tamarod inspired protest movement, which, following Morsi's removal in Egypt at the beginning of July, called for the dissolution of the Tunisian NCA.<sup>307</sup> Mehrezia Labidi, an influential Ennahda figure and the NCA Vice President, conceded that "the impact of Egypt was quite important", although she spoke mainly about its influence

---

<sup>305</sup> For more details on the negotiations at the Marzouki-led National Dialogue and its outcomes, see Chapters 5 and 6.

<sup>306</sup> Kingsley, P., "Tamarod campaign gathers momentum among Egypt's opposition", *Guardian*, 27 June 2013, available at: <https://www.theguardian.com/world/2013/jun/27/tamarod-egypt-morsi-campaign-opposition-resignation> [accessed 8 September 2018].

<sup>307</sup> Agence France Presse, "Tunisia 'Tamarod' movement aims to dissolve parliament", 4 July 2013, *The Daily Star Lebanon*, available at: <http://www.dailystar.com.lb/News/Middle-East/2013/Jul-04/222546-tunisia-ruling-islamist-party-dismisses-egypt-scenario.ashx> [accessed 8 September 2018]. See also Weslaty, L., "Destitution de Morsi en Égypt: réactions mitigées en Tunisie", *Counterpoints*, 6 July 2013. Ennahda controlled six seats in the CC if we add the constitution's general rapporteur who was also a member of a Ennahda. See Table 4.



on Ennahda's decision to leave the government. Yet she also expressed the opinion that the party had learned a broader lesson from the events in Egypt, which was that "transition phases are very particular – electoral legitimacy is not enough. We were aware we needed consensus, and the widest possible".<sup>308</sup>

In common with the earlier Marzouki-led National Dialogue, the creation of the CC on 29 June can, therefore, be seen as a reaction to the intensification of political tensions. The move was initiated by NCA President and Ettakatol leader, Mustafa Ben Jaafar (Geisser, 2014, p. 173). Qualitative interviews shed light on the negotiations behind the launching of the CC. According to an Ettakatol deputy, Mouldi Riahi, what his party fought for with regard to the CC was to achieve a different composition compared to the constituent commissions, one in which each party would be represented by two deputies. However, he claimed Ennahda did not accept the deal. The agreement that parties eventually settled on was to grant Ennahda five seats, while the opposition Democratic Bloc received three.<sup>309</sup> This evidence suggests that while Ennahda was willing, under pressure, to concede more influence to smaller, non-Islamist parties in this ad-hoc commission aimed at tackling the remaining dividing points of the constitution, it was not prepared to let its leading position in constitutional negotiations go completely.

---

<sup>308</sup> Author Interview, 10 July 2014, Tunis.

<sup>309</sup> Author Interview with Mouldi Riahi, deputy for Ettakatol, 28 November 2016, Tunis. On the same question, a CPR deputy and CC member Ikbel Msadaa told me: "We couldn't tell the majority party that they would be represented by the same numbers as others. We tried to combine the proportionality with political representation, so that we had all points of view around the table." Author Interview, 9 November 2016, Tunis.

#### 7.1.4 Availability, Values, and Distribution of Power

The analysis shows that none of the parties of the anti-Ben Ali coalition had entirely free hands in setting the rules and procedures that guided how constitutional change unfolded. Following Ben Ali's removal in January 2011, remnants of the outgoing regime, who controlled the government, were responsible for choosing between amending the old constitution and a scenario involving a more complete constitutional change, as well as determining how it would proceed. The path that they eventually selected, which consisted of popular elections to the NCA, did not, however, reflect their own preference, but that of protesters, whose pressure proved instrumental in securing this roadmap in practice. It, therefore, appears from the Tunisian case that the pallet of options for constitution-making design that parties could pick from was bound by both by the actions of the interim government and the transition context.

While these early choices narrowed the range of possible options for constitution-making design, it in no way restricted the inclusivity of the process. The aspects of constitution-making design which were most critical in shaping inclusiveness, the electoral system for the NCA, the mechanisms for the approval of the constitution, and the formation of the CC, were determined by the HA and the NCA, two institutions where the political parties had the greatest say. Available evidence suggests that even though normative considerations might have shaped some of the parties' decisions, these key design choices were influenced, primarily, by other factors. When selecting the electoral system, rather than thinking purely about future compromises, the parties sought rules that they thought would favour them. That Ennahda was not able to push through the electoral rules it preferred was a result of the structure through which this issue was settled. The key body was the HA, where each political party had an equal voice. The HA was a forum in which there was a

multiple balance of power, which I have identified as a favourable condition for the implementation of inclusive constitution-making design.

A similar situation framed the debates around the mechanisms for the approval of the constitution. Whether Ennahda, being the strongest party in the NCA, wished to lower the margin necessary for the approval of the constitution or not is a moot point. We simply do not have that information. The party controlled only 41 % of the seats in the NCA and, so, could not pass the relevant law on its own. The remainder of the NCA, however, was composed of smaller parties. It is unlikely that these parties would willingly have undermined their influence over the constitution by supporting a proposal for approving the constitution by less than the required two thirds of the membership of the NCA. Once again, the situation in which a multiple balance of power existed contributed to the adoption of mechanisms for approval that made it difficult for any temporary majority to pass any partisan constitution. Nevertheless, I would argue that the key decision was the HA's previous choice of a PR electoral system in combination with the HQLR. This is because, as I argued in Chapter 6, based on Carey's (2013) simulation of the results of the NCA elections under various electoral rules, if the NCA elections had been conducted under another system, Ennahda would have ended up with more seats in the Assembly. This, in turn, could have given the party enough leverage to unilaterally set the approval margin for the constitution. I, therefore, conclude that the body which framed the decisions about the electoral system, the HA, and the configuration of power between parties that it maintained, was the essential factor that enabled the implementation of a constitution-making design which promoted inclusiveness in Tunisia.

Inquiry into the evolution of constitution-making design in Tunisia further demonstrates that the rules and procedures that guided the production of the

constitution were fluid, as parties altered them in response to broader political tensions. Economic and security problems that the Ennahda-led governing coalition faced coupled with, in 2013, unexpected political assassinations and outside pressures in the form of military intervention against the ruling Islamist party in nearby Egypt. Aiming to resolve controversies surrounding the penultimate draft of the constitution in June 2013, the Consensus Commission, which further strengthened the capacity of smaller, non-Islamist parties to shape the constitution, and hence increased substantive inclusiveness, was formed with these pressures as a backdrop. Ennahda's openness to continuing constitutional talks in this commission, which provided a forum more favourable to its opponents, demonstrates the point that the party did not adamantly cling to a majoritarian strategy. However, whether Ennahda valued consensus and inclusion, or not, it only conceded to the alteration of the constitution-making design and the creation of the CC when subjected to significant pressure. It is, of course, impossible to be certain about the motivation of any actors, especially when analysing them in retrospect. Nevertheless, the analysis indicates that factors other than strictly normative considerations influenced the implementation of the inclusive constitution-making design in Tunisia.

## **7.2 Explaining Limits to Inclusive Constitution-making Design in Egypt**

The constitution-making design implemented in Egypt was clearly less inclusive than in Tunisia (see Chapter 6). The aspect which undermined its overall inclusiveness most critically was the fact that a small majority made up of 57 % of members of the Constituent Assembly could pass the constitution. Could another type of process have been selected in Egypt? Or, was the capacity of parties of the anti-Mubarak coalition in terms of applying rules and procedures that would have enhanced inclusiveness

restricted by the decisions made by the SCAF at the start of the transition process? Alternatively, if parties did have oversight of these decisions, was the limited inclusiveness an outcome of the distribution of power between the various groups which was not favourable to the adoption of an inclusive process? Or, were there other factors that played their part in the decision-making process? This section probes these questions by inquiring into the origins of the design which guided the process of producing the new constitution in Egypt after the 2011 revolution. I first revisit the decisions by which the SCAF narrowed options for constitution-making design during the first half of 2011, and highlight the conflicts regarding the constitution-making procedures that these choices sparked in the anti-Mubarak coalition. Next, I review the debates about the composition of the CA. The exploration draws primarily on available newspaper coverage of both local and international media outlets, and qualitative interviews.

#### 7.2.1 Early Debates about Constitution-making Design and the 30 March Constitutional Declaration

Following Mubarak's resignation in February 2011, the SCAF acquired executive and legislative power, and was further responsible for making decisions regarding the scope and the form of constitutional change. The path that the generals propounded envisaged amendments to the 1971 Constitution rather than a more thorough root and branch reform. In terms of putting this scenario into practice, they went as far as the appointment of a small committee of experts who were given the remit of proposing amendments and organizing a referendum on these recommendations. Voters overwhelmingly supported those changes to the existing constitution on 19 March

2011.<sup>310</sup> The lead up to the referendum revealed, even more starkly than previously, the conflicting preferences for the organization of the democratic transition and the constitution-making process held by parties of the anti-Mubarak coalition.

Many left wing politicians, liberals, and revolutionaries insisted on a complete break with the old constitution and dismissed the constitutional amendments out of hand.<sup>311</sup> Among them, the April 6 Movement, one of the leading organizations uniting young revolutionaries, proposed an incremental process that involved drafting an interim constitution by an appointed, inclusive, body before presidential and parliamentary ballots went ahead.<sup>312</sup> This timeline, advocating constitution before elections, later became central to non-Islamist demands for the timing of the changes to the constitution. On the other hand, Islamists from the Muslim Brotherhood and Salafi leaders favored a swift move to presidential and parliamentary elections with the constitution written subsequently.<sup>313</sup> While their opponents ascribed this to their ambition for power, another valid explanation is that Islamists, many of whom had

---

<sup>310</sup> Kirkpatrick, D. and K. Fahim, "In Egypt, a panel of jurists is given the task of revising the country's constitution", New York Times, 15 February 2011, available at: [http://www.nytimes.com/2011/02/16/world/middleeast/16egypt.html?pagewanted=2&\\_r=5&hp](http://www.nytimes.com/2011/02/16/world/middleeast/16egypt.html?pagewanted=2&_r=5&hp) [accessed 3 September 2018]. See Chapter 4 for details.

<sup>311</sup> MacFarquhar, N., "Egyptian voters approve constitutional change", New York Times, 20 March 2011, available at: <http://www.nytimes.com/2011/03/21/world/middleeast/21egypt.html?pagewanted=all> [accessed 3 September 2018].

<sup>312</sup> See the statement by the April 6 Movement, "Egyptians urged to vote 'no' in the referendum", A world to win, available at: <http://aworldtowin.net/frontline/April6.html> [accessed 12 September 2018].

<sup>313</sup> Ezzat, D., "Egyptian Islamists, along with NDP, campaign hard for a 'yes' vote on constitutional amendments," Ahram Online, 17 March 2011, available at: <http://english.ahram.org.eg/NewsContent/1/0/7971/Egypt/0/Egyptian-Islamists,-along-with-NDP,-campaign-hard-.aspx> [accessed 3 September 2018].

been subjected to restricted access to political competition or repression,<sup>314</sup> wanted to avoid extending the interim period during which the military council governed the country (Sallam, 2013, pp. 102-3).

The SCAF eventually discarded the amendments endorsed by voters and on 30 March issued its own Constitutional Declaration, which was to serve as an interim constitution instead of the existing one with its contentious changes. The document narrowed the range of available options for constitution-making design. It stipulated that a 100-member Constituent Assembly, selected by deputies of a bicameral parliament, would draft a new constitution in a six month period, after which the text would be submitted to voters in another referendum.<sup>315</sup> The emerging roadmap, however, once more failed to satisfy all sides and, as the parliamentary elections drew closer, demands for changing it from the opponents of the Islamists grew in intensity. Two initiatives gained notoriety at the time, the “constitution first” campaign and one calling for detailing of what were described as supra-constitutional principles. The idea of writing the new constitution before elections reflected the concerns of many secularists that the Muslim Brotherhood would dominate the elections and, consequently, write the constitution. Yet postponing the vote was vigorously opposed by the MB, who saw it as a failure to respect the results of the 19 March referendum,

---

<sup>314</sup> See Kassem (2004), and Ashour (2009).

<sup>315</sup> See Article 60 of the Constitutional Declaration. ConstitutionNet, “The 2011 Constitutional Declaration”, International IDEA, available at: [http://www.constitutionnet.org/sites/default/files/march\\_2011-egypt\\_interim\\_constitution-english.pdf](http://www.constitutionnet.org/sites/default/files/march_2011-egypt_interim_constitution-english.pdf) [accessed 21 August 2018].

and argued that the new constitution could only be legitimate if it emanated from the results of a popular election (Dunne, 2011).<sup>316</sup>

To reconcile the two camps, multiple proposals were proposed outlining general constitutional principles that all sides could agree on before the writing of the constitution commenced.<sup>317</sup> The political wing of the Muslim Brotherhood, the FJP, held an ambivalent position, supporting initiatives rhetorically, yet carefully ensuring that the choices of the future CA were not restricted. The FJP Secretary General, Saad El-Katatni, was quoted as saying that they had “no problem with the proposed bill of rights as long as the will of the majority of Egyptians – who want elections before the drafting of the constitution – is respected”.<sup>318</sup> This initiative did not produce a breakthrough either. After an attempt by the interim government to push through its own set of principles that included a privileged status for the armed forces,<sup>319</sup> protests

---

<sup>316</sup> El-Gundy, Z., “Debate rages over constitution or elections first options,” *Ahram Online*, 23 June 2011, available at: <http://english.ahram.org.eg/NewsContentPrint/1/0/14841/Egypt/0/Debate-rages-over-Constitution-or-elections-first-.aspx> [accessed 12 September 2018].

<sup>317</sup> The proposals included a document dubbed the Bill of Rights that was proposed by long time member of the opposition and Nobel Peace Prize laureate Mohamed El-Baradei, and the Al-Azhar document enhanced by the Islamic scholarly authority and affiliated intellectuals. See Saleh, H., “ElBaradei to launch Bill of Rights for Egypt,” *Financial Times*, 19 June 2011, available at: [http://www.ft.com/cms/s/0/13acd2c8-9a91-11e0-bab2-00144feab49a.html?ft\\_site=falcon&desktop=true#axzz4pj5uDdYL](http://www.ft.com/cms/s/0/13acd2c8-9a91-11e0-bab2-00144feab49a.html?ft_site=falcon&desktop=true#axzz4pj5uDdYL) [accessed 12 September 2012].

<sup>318</sup> El-Din, G., “Divided Again,” *Al-Ahram Weekly*, June 2011. The article is inaccessible now. Originally accessed at: <http://weekly.ahram.org.eg/2011/1057/eg7.htm> [accessed November 2014].

<sup>319</sup> The document is generally referred to under the Deputy Prime Minister’s name, Al-Silmi. It was supported by some non-Islamist groups who might have seen it as their last hope of limiting Islamist influence over the constitutional process. Islamists, however, refused to accept its key points as it aimed to settle the composition of the CA and substantially narrow the choices those drafting the constitution had over the content of the constitution. For its full text, see ConstitutionNet, “Draft Declaration of Fundamental Principles for the New Egyptian State,” 2011, available at: [http://www.constitutionnet.org/sites/default/files/2011.11\\_-\\_constitutional\\_principles\\_document\\_english\\_0.pdf](http://www.constitutionnet.org/sites/default/files/2011.11_-_constitutional_principles_document_english_0.pdf) [accessed 12 September 2018].



led to the shelving the whole idea of pre-constitutional principles in November 2011 (Hamad, 2012, p. 56). The parliamentary elections, consequently, went ahead before a resolution to the controversy about the sequencing of elections and constitutional change could be reached.

Two conclusions can be drawn from these debates about the choice of constitution-making design. Firstly, early into the transition process, political parties of the anti-Mubarak coalition were not the main players involved in selecting the procedures for the adoption of the constitution. Generals of the SCAF shaped the scope, timing, as well as the procedures of constitutional change. The Constitutional Declaration which the SCAF fashioned in March 2011 did not preclude the role of parties of the anti-Mubarak coalition from deciding how inclusive the constitution-making process would be. Nevertheless, by vesting the capacity to choose members of the drafting body to parliament without specifying the internal working mechanisms of the CA, the declaration made for a situation where the winners of the upcoming parliamentary elections, if they emerged strong enough from the polls, could choose how the constitution would be produced and, crucially, who would make decisions about the content of the final document. This scenario became a reality when Islamist parties secured 71.9 % of the seats in the lower chamber, the PA. Secondly, what emerges clearly from the conflicts about the timing of the constitution-making process is how much the FJP, aware of its popularity among voters which exceeded that of non-Islamist parties, clung on to the idea of electoral legitimacy. As we will see in the next section, which highlights the discussions about the criteria for selecting members of the CA, this tendency then surfaced even more directly with the FJP defending its greater say in the drafting of the constitution by pointing to the support the party had among the electorate.

### 7.2.2 Determining the Selection Criteria for the Constituent Assembly

Once voters had elected their representatives to the two chambers of parliament, which acquired its definitive shape in January 2011 and in which Islamists obtained a majority, discussions about the criteria by which the sitting MPs would select the 100 members of the CA were initiated and put Islamist and non-Islamist parties at odds. To recapitulate what I concluded in Chapter 6, divisions emerged around three core issues: (1) whether the CA would be composed of representatives from within or outside of the parliament; (2) what the proportion of Islamist and non-Islamist deputies in the CA would be; and (3) what size majority would be sufficient to pass the entire constitution. I have argued previously that the issue that turned out as the most problematic feature of the constitution-making design, in terms of restricting the inclusiveness of the process, was not the overrepresentation of Islamists in the second CA as, in fact, they were rather underrepresented, but the mechanism used for approving the charter. This design element allowed a narrow majority of 57 % of the CA to pass the constitution, decreasing the chances of the weaker, non-Islamist parties being able to shape its text. Non-Islamists found this element difficult to accept, as I argued in Chapter 6.<sup>320</sup> How did this feature of the constitution-making design come into being?

At this point, political parties, not the SCAF, led the way. At first, the debate

---

<sup>320</sup> According to a liberal politician and CA Spokesperson, Wahid Abdul Majid, securing the two thirds majority necessary to approve the constitution was the key demand of the FEP and ESDP throughout the negotiations about the CA selection criteria. See Abdul Majid, W., “al-qīṣṣa al-kamila lima ‘rakat al-jam‘iyya al-ta’sysiyya (2-2)” (Full story of the Constituent Assembly Battle, 2-2), Al-Shorouk, 21 June 2012, available at: <http://www.shorouknews.com/columns/view.aspx?cdate=21062012&id=e0f322e9-e17c-42fa-89c0-39057201e099> [accessed 28 August 2018].

about the criteria for appointing the CA was tackled by the newly elected bicameral parliament, during joint meetings of its two chambers. As the task increasingly generated conflict, multiple initiatives aimed at solving the deadlock crystalized between April and June 2012 both from within and outside parliament. The resulting talks about the criteria involved a broad range of political parties coming together from across the anti-Mubarak coalition and even involved members of civil society.<sup>321</sup> The SCAF was not involved in the decision-making, but retained its overseeing role, making sure that a deal would emerge in good time. In June, the SCAF imposed a deadline by which agreement had to be reached, arguing that such an outcome was already long overdue.<sup>322</sup> Even though my interviewees characterized the negotiations about the CA selection criteria using phrases such as “real dialogue” and “consensus based process”,<sup>323</sup> the issues of how many seats Islamists would control, and related to it, by what proportion of members would the CA pass the constitution, were recurring concerns and were never resolved to the satisfaction of non-Islamists.

What emerges from the available information about these talks is that while

---

<sup>321</sup> See the account of the negotiations by Wahid Abdul Majid.

Abdul Majid, W., “al-qışsa al-kamila lima‘rakat al-jam‘iyya al-ta’sysiyya (1-2)” (Full story of the Constituent Assembly Battle, 1-2), Al-Shorouk, 20 June 2012, available at: <http://www.shorouknews.com/columns/view.aspx?cdate=21062012&id=3a6452e6-5c5f-4856-8300-ff8241b63569> [accessed 28 August 2018]; and Abdul Majid, W., “al-qışsa al-kamila lima‘rakat al-jam‘iyya al-ta’sysiyya (2-2)” (Full story of the Constituent Assembly Battle, 2-2), Al-Shorouk, 21 June 2012.

<sup>322</sup> Author Interview with Mohamed Mohi El-Din (Ghad Al-Thawra Party, 10 August 2014, Cairo); and Mohamed Abdel Alim Dawoud (Wafd Party, 17 August 2014, Cairo). See also Ahram Online, “Broad satisfaction over Egypt’s Constituent Assembly’s deal”, Ahram Online, 10 June 2012, available at: <http://english.ahram.org.eg/NewsContent/1/64/44342/Egypt/Politics-/Broad-satisfaction-over-Egypt-constituent-assembly.aspx> [accessed 15 August 2017].

<sup>323</sup> Author Interview with liberal politician Amr Hamzawy (Prague, 8 October 2017); and Mohamed Mohi El-Din (10 August 2014, Cairo).

the FJP, along with the Salafi Nour Party, was willing to include a more significant proportion of non-Islamists in the CA, it stood its ground on the size of the majority necessary for the approval of the constitution which it wanted to be below the two thirds demanded by non-Islamists. In fact, the FJP initially preferred that the constitution would be approved by simple majority, 50 % plus one, and only later conceded to enlarge it to 57 %.<sup>324</sup> Despite the party's pledges early in the transition process that it wished to "participate, not to dominate" in post-revolution politics,<sup>325</sup> once its dominant position was cemented through popular elections, the party did not want to diminish that control. As a leading member of the MB phrased it:

We in the Brotherhood and the FJP believe in consensus. But everyone must know that complete consensus is impossible. What if 90 per cent of the Egyptian people wanted the political system to be presidential or parliamentary and only 10 per cent wanted a mixed system? What if everyone insisted on their opinion? We have to go with what the majority of the people want, not with what the majority of the Brotherhood or the FJP want.<sup>326</sup>

This evidence leads to the conclusion that the FJP retained its commitment to

---

<sup>324</sup> Abdul Majid, W., "al-qisṣa al-kamila lima 'rakat al-jam' iyya al-ta' sysiyya (2-2)" (Full story of the Constituent Assembly Battle, 2-2), Al-Shorouk, 21 June 2012.

<sup>325</sup> CNN Wire Staff, "Muslim Brotherhood: 'We are not seeking power'", CNN, 10 February 2011, available at: <http://edition.cnn.com/2011/WORLD/africa/02/09/egypt.muslim.brotherhood/index.html> [accessed 3 September 2018]. See also Ahram Online, "MB official says constitution won't be set by parliament majority but via consensus", 26 December 2011, available at: <http://english.ahram.org.eg/NewsContent/1/64/30258/Egypt/Politics-/MB-official-says-constitution-wont-be-set-by-parli.aspx> [accessed 12 September 2018].

<sup>326</sup> Al-Ahram Daily, "Interview with Khairat El-Shater", Ahram Online, 7 April, available at: <http://english.ahram.org.eg/NewsContentPrint/1/0/39511/Egypt/0/Interview-with-Khairat-ElShater.aspx> [accessed 15 August 2017].

the majoritarian model of constitution-making. The final decision about this crucial element of the constitution-making design was left to parliament where elections generated a hegemonic situation, which, as I hypothesized, was not prone to the promotion of an inclusive process. This circumstance, therefore, meant that forces with an Islamist inclination, who generally preferred keeping the threshold for approving the constitution low, could have it their way.

### 7.2.3 Availability, Values, and Distribution of Power

The inquiry into the origins of constitution-making design in Egypt reveals that, as in the Tunisian case, parties of the anti-authoritarian coalition were not completely free to determine how constitution-making would proceed, and that the available paths were restricted by the activity of the military generals who took over governing the country after the popular protests removed Mubarak in February 2011. The Constitutional Declaration issued by the SCAF did, as I have indicated, shape the timing and the type of the constitutional change process. The declaration did not, however, directly tackle design elements responsible for regulating inclusiveness. Nevertheless, the sequence that it prescribed decreased the prospects for inclusive design by giving the key decisions about the method of convening the constitution-making body and its internal working mechanisms to the majority in the parliamentary elections.

Further, parliament was characterized by a hegemonic situation with power monopolized by the forces of one political inclination, in this case the Islamist parties, rather than being dispersed among a number of forces. Consequently, parliament did not present a favourable setting for the adoption of an inclusive constitution-making design. Whether the Muslim Brotherhood and its political wing, the FJP, was power-

seeking or aimed primarily at ensuring that the constitutional change process was not unduly prolonged,<sup>327</sup> which could have been the outcome of granting the minority more say over the text, it clearly did not value inclusion and consensus enough to alter its strategy. Neither did it have any reason to do so. The decisive factor was that the transition sequence that evolved under the SCAF's leadership placed the FJP and its Islamist allies in a position to choose the constitution-making design that they preferred.

### **7.3 Conclusion**

This chapter has shed light on the origins of constitution-making design in the context of democratization in general, and addressed the question of why a more inclusive design came to be implemented in Tunisia following the 2010/11 uprising than in Egypt. Specifically, it investigated whether, and how, the options for inclusive design from which the parties of the anti-authoritarian coalitions could choose were restricted, and whether their design choices, whenever those were in their hands, were determined by the configuration of power between the groups or by normative values.

I found that even though the decisions about the aspects of constitution-making design that touched upon inclusiveness were mostly left to the parties to determine, interim rulers and the context of transition, nevertheless, reduced the number of the available options. This generated a situation more favourable to the application of an inclusive constitution-making design in Tunisia than in Egypt. In Tunisia, the framework in which the parties made the key choice to elect the NCA through the PR system, in combination with the HQLR, the Higher Authority, imposed a multiple

---

<sup>327</sup> I explore this motivation in more detail in Chapter 5, where I unpick the constitutional disagreement.

balance of power scenario which gave each party an equal voice and, therefore, prevented stronger Ennahda from pushing through its own proposal which would have likely generated a less proportional outcome. In contrast, the SCAF's decision to let the new parliament decide the composition and the internal working mechanisms of the Constituent Assembly inevitably vested these key choices in the parliamentary majority. These differences that occurred early in the transition set the constitution-making processes in Egypt and Tunisia on their different paths. I did not find support for the assumption that the difference in inclusiveness of the constitution-making design in the two countries came about because Tunisia's Ennahda Party was more pro-consensus than its counterpart in Egypt, the FJP.

The chapter further exposed the endogenous nature of constitution-making rules and procedures. This could, most clearly, be seen in Egypt. With the key aspects of the constitution-making design being set by parliament, the design was the product of the existing configuration of power, which favoured the Islamist parties, and, therefore, it was unlikely to play a role as a factor shaping the Islamists behaviour during constitution-making. In Tunisia, this was the case in the later changes in the constitution-making design, and specifically in the formation of the Consensus Commission. There, the foundation of the CC was firmly in the hands of parties who held accurate information about their relative strength, based on their showing in the 2011 elections. We, therefore, cannot argue that the CC, which was an essential forum for reaching compromises on the remaining points of conflict between Islamist and secularist parties towards the end of the constitution-making process, tamed the more popular Islamist forces in the NCA. It is more likely that the factors, which I identified as leading to the creation of the CC, that is both domestic and outside pressures on the Assembly and the ruling Ennahda, pushed the party towards accepting the need to

make further concessions. These findings highlight the limitations of the constitution-making design and its inclusiveness as an explanatory factor in bringing about constitutional (dis)agreement in Egypt and Tunisia.



## Conclusion

“The most dangerous risk would be to write a constitution which part of society says it is not theirs, a constitution which they feel no part.”

*Habib Khedher (Ennahda), National Constituent Assembly General Rapporteur.*<sup>328</sup>

“I saw really that the Constituent Assembly was divided into two, with people living very different lives. We had two very different concepts of the constitution. I wondered how were we going to come closer together, but we managed, and the proof is the explosion of joy when we voted the constitution by 200 votes.”

*Salma Baccar (Al-Massar), NCA deputy and Tunisian film director and producer.*<sup>329</sup>

When a dictatorship is brought down, the adoption of a new constitution that attracts broad support across the political spectrum is an important step towards the implementation of democracy. In January 2014, three years after the revolutionary tide which unseated autocratic President Ben Ali, Tunisia’s National Constituent Assembly, representing a wide range of societal interests, approved the new constitution by near unanimous consensus. The charter was welcomed by both the Islamist Ennahda party, as well as the party’s secular opponents. The country’s score

---

<sup>328</sup> Author Interview, 25 November 2016, Tunis.

<sup>329</sup> Author Interview, 30 June 2014, Tunis.

in the Freedom House ranking consequently jumped to “free”.<sup>330</sup> Tunisia also appeared as *The Economist* country of the year, with its editors praising the moderation and pragmatism of Tunisians, as well as the adoption of an “enlightened constitution” which “nurtured hope in a wretched region and a troubled world”.<sup>331</sup>

In contrast, the constitution produced in Egypt in November 2012 only fostered disagreement, and led to a deepening of the political polarization along religious lines. The division between the Freedom and Justice Party and non-Islamist parties grouped in the National Salvation Front grew to such extent that when the military stepped into politics in July 2013 to oust Islamist president, Mohamed Morsi, and suspend the contentious constitution, it enjoyed the approval of most of the secularists. The failure to settle on the new constitution after the removal of Mubarak in Egypt in February 2011 seems, indeed, to have signalled “the beginning of the failure of its democratic experience” (El-Shobaki, 2014, p. 95).

The context of the Arab Spring led to the re-writing of authoritarian constitutions in Libya, Yemen, Egypt, Tunisia, and less radically amended in Morocco. The debates that emerged from the transitions, about which constitution-making procedures would be most conducive to the accommodation of competing constitutional visions of parties, and to democracy, were particularly vibrant. One aspect of constitution-making design that prescribes that all important political factions are involved in the negotiations for, and the adoption of, the constitution, received special attention from local politicians and observers (Moustafa, 2012; DRI,

---

<sup>330</sup> Freedom House, “Freedom in the world 2015: Tunisia”, available at:

<https://freedomhouse.org/report/freedom-world/2015/tunisia> [accessed 22 July 2016].

<sup>331</sup> Economist, “Our country of the year. Hope springs”, 17 December 2014, available at:

<https://www.economist.com/leaders/2014/12/17/hope-springs> [accessed 10 August 2018].

2011; Carey and Reynolds, 2011; Revkin and Auf, 2012; Brown, 2011a). That this agenda became so prominent is less surprising when we zoom out from the region and consider the wider international context. International actors involved in the promotion of democracy and peace-keeping today care about the processes of how constitutions are produced to an extent that was not the norm 20 years ago. At that time, the greater focus of any assistance provided was on the text of the constitution. Examples of “best practices” that have since been promoted globally, recommending that constitution-making processes are representative, participatory, transparent, and inclusive, could be found in some of the Middle Eastern and North African countries where popular protests initiated efforts at democratic and constitutional change after 2010. These developments also engaged scholars, who sought to determine whether different constitution-making designs are conducive to democracy, reduction of violence, the longevity of a constitution, as well as other outcomes (e.g. Ginsburg et al., 2009; Carey, 2009; Eisenstadt et al., 2015; 2017; Widner, 2005; 2008; Elkins and Ginsburg, 2013; Saati, 2015).

Linking processes to outcomes, as Chapter 2 demonstrated, has, however, proven difficult. It has been complicated by the diverse nature of constitution-making processes, which combine different bodies, rules and practices, as well as actors, timing, and contexts. Despite an increasing number of studies that have considered constitution-making and its design as the main object of analysis, I found that little systematic evidence has been gathered. The context of democratization and the inclusion of competing political parties has been understudied and light remains to be shed on the origins of constitution-making designs. Focusing on the inclusion of parties of the anti-authoritarian coalition as enabled by the rules and practices that

framed how parties convened, debated, and approved constitutions following the opportunity afforded by a move to democracy, this thesis addresses these deficiencies.

Comparing the experience of two similar cases where constitutional change was intertwined with democratization following the uprisings that swept through the Middle East and North Africa, Egypt and Tunisia in 2010 and 2011 respectively, the thesis has sought to answer the question: Does inclusive constitution-making design help to foster agreement on a constitution during democratization and, if so, how? I further explored two sub-questions: (1) Does the difference in constitution-making design help to explain why political parties in the anti-authoritarian coalitions disagreed on the constitution in Egypt, while they reached agreement in Tunisia?; (2) Why do some countries adopt a design that is inclusive, while others do not? The thesis has combined the knowledge gathered in the scholarly literature on democratization, constitution-making, and institutional design with the insights of practitioners to build a theoretical framework that helps to understand how the inclusion of political parties in constitution-making works, and what factors are most conducive to the facilitation of inclusive design in the midst of democratic change.

This final chapter ties the key findings together, highlighting how they enhance our knowledge of the questions addressed, and their significance vis-à-vis the relevant literature on constitution-making and democratization. It also acknowledges the limitations of this research, points to potential avenues for future academic inquiry, and outlines policy implications. While the answer to the question reached in this thesis as to whether inclusive constitution-making design can foster agreement on a constitution is in the affirmative, its main contribution lies in illuminating how this happens, and in exposing the qualifications and caveats that surround this explanation. The thesis provides evidence that even a highly inclusive design, which ensures that

all important political parties are at the table, and where the power of the strongest party to pass the constitution by itself is considerably restricted, cannot ensure the constitution will be broadly embraced. Another limitation stems from the fact that, as this research has revealed, only some transition processes might provide a favourable context for the implementation of an inclusive constitution-making design after the removal of an autocrat. Finally, drawing on evidence from the Egyptian and Tunisian case studies, I underline the endogenous nature of constitution-making rules and procedures, which further curbs the power of the design-based explanation. These findings contribute to the debate about constitution-making procedures by moderating the claim that their modalities matter, while providing a solid basis for future exploration of the role of inclusiveness and the ways in which constitution-making designs are introduced during democratization.

### **8.1 Inclusive Design and Constitutional (Dis)Agreement in Tunisia and Egypt**

Inclusiveness has been a widely promoted ideal, one to which constitution-making should aspire. Yet as it is such a vague term, it has been assigned a plurality of meanings by practitioners, scholars, and participants themselves, as I pointed out in Chapters 2 and 3. Scholars discussing inclusiveness have most often paid attention to its vertical aspect and focused on public participation in constitutional change processes. In contrast, this thesis has concentrated on the role of the inclusion of political parties across the anti-authoritarian coalition, former opposition parties and newcomers, with no ties to the outgoing regime. As the classical transition literature has indicated, even as these forces share the objective of ending the authoritarian era, they are likely to be divided on other issues. Indeed, I found that in the two cases explored here, the secularist and Islamist political forces, although far from

homogenous groups themselves, promoted conflicting political visions, and held diverging preferences for the post-revolution constitutional order. They disagreed on a number of elements of the constitution, most importantly the role of religion in the state, the formulations regarding rights and freedoms, and in Tunisia, also, on the form of government. Their competing political agendas were coupled with mutual mistrust promoted by the divide-and-rule tactics employed by outgoing regimes, as well as the strong degree of popularity that Islamists managed to achieve in both countries. The Islamist-secularist divide made for a situation where finding constitutional agreement became an especially delicate enterprise.

Focusing on the divided parties of the anti-authoritarian coalitions, this thesis has developed a distinction between two forms of inclusiveness, which were previously only broadly outlined by theoretical accounts of constitution-making and policy-oriented literature. First, equivalent to the notion of being at the negotiating table, formal inclusion refers simply to membership of the main constitution-making bodies. Second, substantive inclusion can be seen as the ability of an individual party to shape the constitution. That, in turn, depends on the constitution-making design and especially the mechanisms used for the selection of members of the main constitution-making bodies, internal organization of the constituent assembly, and constitution approval, as much as on the party's electoral popularity. The conceptualization of substantively inclusive design, which I put forward in this thesis, was inspired by the overarching principle behind Lijphart's (2012, p. 2) consensus model of democracy. This is the idea that majority rule is only a minimum requirement and that the aspiration is to "share, disperse, and limit" power. A design that promotes inclusion, therefore, boosts the leverage that weaker parties can exercise, although that would not necessarily guarantee that all parties could impact the text to the same extent. A

design that is highly inclusive guards against any overrepresentation of the majority party in the main constitution-making channels and against marginalizing the voices of smaller parties in the internal organization of the constituent body. It further maximizes the size of the majority required for the adoption of a constitution and, ideally, also puts in place additional mechanisms that smaller parties can fall back on if the majority is aggressive enough to push through the constitution against their will.

To understand how inclusion works, not only on paper but also in practice, I have considered the interplay between formal and less formal constitution-making channels throughout the three stages of the convening constituent bodies, debating the constitution, and approving the final text of the document. In addition, I sought out the perspectives of insider participants in the process. I found that while formal inclusiveness was achieved in both countries, the constitution-making design was less substantively inclusive in Egypt than in Tunisia, and that what mattered to the various parties involved was the capacity to adjust substantially the content of the constitution. I summarize these findings, and my answers to the question as to how this difference in the design influenced constitutional (dis)agreement, in the sections below.

#### 8.1.1 Different Designs, Different Outcomes

Empirical analysis has shown that the constitution-making design adopted in Tunisia after 2011 was substantially and formally inclusive across all of the stages observed, and that its degree of inclusiveness was enhanced in the last year of the process. The main constitution-making body, the NCA, was popularly elected, and the votes were translated into seats in a highly proportionate manner. Although Ennahda won a dominant position in the NCA as well as in the constituent commissions, this outcome was not a product of constitution-making rules that discriminated in its favour. The

party simply fared far better than any other group in the first democratic elections. Yet Ennahda's domination was not absolute. The two thirds majority required for the approval of the constitution prevented it from writing its own constitution. In practice, the party controlled 89 seats in the NCA, 57 seats short of the number necessary to pass the constitution on its own. This was a substantial deficit and, therefore, Ennahda had to look for partners among other political groups and independent delegates.

This level of inclusivity was, however, not sufficient to guarantee that constitutional agreement among the parties of anti-Ben Ali coalition would emerge. Qualitative interviews with NCA deputies from the secular parties, both in opposition and in government, revealed their complaints about the "majority approach", maintained by Ennahda, to producing the constitution. In a situation in which Ennahda consistently relied on its numerical superiority in the NCA, consolidated by the party's impressive showing in the 2011 polls, secularists feared the worst. They were concerned that proponents of a religiously conservative vision of the constitution, who in the NCA came from Ennahda, as well as other parties and independent deputies, would be able to impose the constitution on them. When opposition parties withdrew from the NCA in July 2013 in protest at the political assassination of a left-wing opposition leader, their actions were additionally motivated by disagreement with the penultimate draft of the constitution. In that draft, religion was given a more prominent role than in the draft that was eventually accepted as the new constitution half a year later.

I demonstrated in Chapter 6 that the capacity of non-Islamists to modify the text of the constitution was reinforced between June 2013 and its adoption in January 2014. This change was partially an outcome of the introduction of a new constitution-making body, the Consensus Commission. The CC was, initially, an informal



committee created from within the NCA that presented a different configuration of power than that of the other commissions. It gave more leverage to the opposition, while limiting Ennahda's voice. However, that situation became even more favourable for the secularists later in the process. By the end they had achieved almost a comparable level of influence on the text of the constitution as that enjoyed by Ennahda, despite their much poorer electoral showing. Only at that point were secularists able to further mould the constitution from within the CC into the shape that they preferred, which ultimately secured their agreement.

The story was very different in Egypt. Like Ennahda, the FJP secured a leading position in the Constituent Assembly, the main body where the constitution was produced. In addition, Islamists of the more conservative, Salafist inclination did well in the 2011/12 legislative elections, which strengthened the overall standing of Islamists in the CA. Still, these parties were not overrepresented in the Assembly in comparison to their electoral success. What, however, did impact negatively on substantive inclusiveness was the low margin required to secure the passage of the constitution. In contrast to the two thirds of deputies needed in Tunisia, the approval of the constitution in Egypt required only the support of 57 % of the CA deputies. This situation made it extremely difficult for secularists to block the wording of an article even if they fundamentally opposed it. While a popular referendum was called to validate the constitution, the fact that just a simple majority of the vote in its favour was sufficient to ratify it, only underlines the conclusion that constitution-making design in Egypt followed a majoritarian logic. The involvement of Egyptian non-Islamists in the process, and their ability to shape the constitution, further diminished as they walked out of the CA. While the overall disagreement on the constitution was linked by various factors, I show that contention over the constitution-making design

further antagonized parties of the anti-Mubarak coalition, and figured amongst the justifications cited by secularist parties for their withdrawal from the CA and their subsequent rejection of the entire constitution.

Considering these findings, the question arises as to whether it makes sense to argue that inclusive constitution-making design helped to foster constitutional agreement in Tunisia while the lack of such inclusiveness resulted in disagreement in Egypt? The case of constitutional change in Tunisia shows that inclusive design prevented the party that won the first elections from unilaterally fashioning the constitution, pushing it to take the views of its partners into consideration. In Egypt, the design did nothing to boost the influence of smaller parties, while it made it easier for the stronger, Islamist forces to adopt their preferred text. Only such constitution-making rules and practices that promote substantive inclusion, it can be concluded, encourage agreement. Being at the negotiating table may help constitution-making protagonists shake off some of the prejudices about their opponents and develop personal ties, as interviews with individual members of Tunisian NCA referred to in Chapter 6 confirm. Yet, these products of formal inclusion can only facilitate negotiations between adversaries if the weaker parties' leverage over the text is maximized. Both in Egypt and Tunisia, all the parties of the anti-authoritarian coalitions had formal membership in the main constitution-making bodies. However, this situation did not prevent them from eventually withdrawing from their constituent assemblies. Finally, it was substantive, not formal, inclusion that was at the centre of disputes between political opponents in Egypt, and that secularists complained they lacked in Tunisia prior to the launching of the Consensus Commission. These observations indicate that constitution-making design, and one that promotes

substantive inclusiveness, can encourage constitutional agreement by providing a safeguard against the adoption of a partisan constitution.

There are, however, two caveats in relation to the reliance on constitution-making design as an explanation for constitutional (dis)agreement which this thesis brings to the fore: the first one stems from the endogenous nature of constitution-making designs that I explored in Chapter 7; secondly, the evidence from the Tunisian case, presented in Chapters 5 and 6, revealed that extensive constitutional agreement only materialized when weaker secularist parties became almost equal partners with the electorally more popular Ennahda. I have argued that this situation resulted only partially from the introduction of the Consensus Commission, and thereby from the modification of the constitution-making design. The fact that secularists became capable of exerting more leverage on the text of the constitution between 2013 and 2014 cannot, therefore, be satisfactorily explained simply by pointing to the changes in constitution-making design. The next section revisits the issue of the origins of constitution-making designs. Based on the empirical evidence that I presented in Chapters 4 – 7, I then evaluate the relevance of alternative explanations of constitutional agreement reached in Tunisia.

### 8.1.2 Limited Design Choices and the Problem of Endogeneity

This thesis has identified the lack of attention that existing literature has paid to the question of how constitution-making procedures come into being. I have argued that this deficiency has clouded our assessment of whether, and how, constitution-making rules and practices matter. This research shows that there are, indeed, good reasons to consider the origins of design. On the one hand, the analysis of the Egyptian and Tunisian case studies confirmed my expectation that how a transition from

authoritarianism proceeds, and who controls it, determines which pathways are available for producing a constitution from which parties can choose. In Egypt, the steps taken by the Supreme Council of the Armed Forces, which took over power after Mubarak's resignation in February 2011, undermined the prospects for an inclusive process. When it vested the responsibility for choosing those who would draft the constitution, and the mechanisms through which the constitution would be adopted, to a parliamentary majority, it in effect diminished the possibility of a truly substantially inclusive process coming to the fore. After Ben Ali fled to Saudi Arabia in January that same year, Tunisians witnessed a transition process in which an appointed interim parliament composed of parties and civil society, the Higher Authority, could choose the electoral system for election to the NCA. Each political party was given the same weight in the HA, a circumstance which bode well for the implementation of inclusive constitution-making design in Tunisia. These findings indicate that countries might be sent off on different tracks not because they followed different constitution-making designs, but because of factors that initiated their adoption in the first place during the democratization process.

On the other hand, the concerns about the endogenous nature of constitution-making designs, and the consequences this circumstance might have for the causal link between inclusive design and constitutional agreement have proven to be well-founded. Constituent assemblies, where the substance of the new charters was discussed in Egypt and Tunisia, on the surface appeared almost like ordinary legislatures. In fact, the Tunisian NCA played a double role, approving laws and writing the constitution. This circumstance might deceive us into thinking that the constitution-making bodies and their design can structure political competition in what is comparable to national parliaments. Yet unlike parliaments in consolidated

democracies, constitution-making bodies are set up for the one-off task of producing a constitution, and their ability to produce “stable, valued and recurring patterns of behaviour” which characterizes political institutions is, therefore, restricted (Huntington, 1968, cit. Lowndes and Roberts, 2013, p. 3). As the situations from which these designs emerge are often so close, temporarily, to the situations in which constitutions are approved, as in Egypt and Tunisia, the problem of endogeneity is intrinsic to the study of constitution-making design. The warning formulated by Kitschelt and colleagues (1999, pp. 11-2) which I highlighted in Chapter 2, that new political institutions implemented during democratization cannot be seen as “primary or exclusive forces that shape” political processes because they depend on present power configuration, has been confirmed by this research. The authors argued that unless political actors put in place institutions that work against their interests unintentionally, political institutions become exogenous to power configurations only if they endure even when power relations change.

These conditions were not met in Egypt. The level of inclusiveness promoted by the constitution-making design was a product of the distribution of power in the parliament, where Islamist parties had a significant majority. In comparison, the constitution-making procedures adopted in Tunisia did not suffer from endogeneity to the same extent. This was because some of its key aspects were determined by the Higher Authority, where there was a different configuration of power than that which existed in the NCA, and the design could, therefore, play a role in fostering agreement by constraining the stronger Islamist groups. The conditions formulated by Kitschelt et al. (1999) for institutions to become exogenous on power configurations do not, however, apply to the later modification of the design with the introduction of the CC, a body which turned out to be critical in enabling the overall constitutional agreement.

As it was implemented by the same parties whose behaviour it was supposed to structure, we should not expect the body to have played a role in bringing about constitutional agreement. Instead, constitution-making rules and practices became simply tools, albeit important ones, that helped parties to negotiate compromises when other factors pushed them into doing so. These findings undermine the weight attributed to the design-based explanation in accounting for the different outcomes which the countries experienced not long after their citizens ousted Ben Ali and Mubarak; broad constitutional agreement in Tunisia but a lack thereof in Egypt. We have to look elsewhere to find a more cogent answer to the question why the constitutional agreement materialized in Tunisia and not in Egypt.

### 8.1.3 Alternative Explanations of Constitutional Agreement

In Chapter 2, I outlined a number of alternative explanations that account for constitutional agreement and which are relevant to Tunisia. Most of them build on the conviction that Tunisian political parties, and the major Islamist actor, Ennahda, in particular, was somehow special. To begin with, Ennahda's leadership has been described as progressively minded. Authors have also stressed the experience with cross-ideological negotiations that Islamists and secularists engaged in prior to the revolution (Stepan, 2012; Stepan and Linz, 2013; Brumberg, 2013). These conditions imply that those drafting the constitution in Tunisia perhaps tackled issues that were less contentious than in Egypt. I did not, however, find any support for this assumption. On the contrary, evidence from Egypt suggests that one of the main issues that created a rift between Ennahda and the secular opposition in Tunisia, relating to whether the political system would be presidential or parliamentary, did not ignite heated conflicts there (see Chapter 5).

Neither can a strong case be made for the argument that parties in the anti-Mubarak coalition were more alienated and suspicious of each other when the transitions began than their counterparts in Tunisia. The prior experience of Tunisian Islamists and secularists with negotiations in what came to be known as the 18 October Collectif might have brought several individual members closer together. However, not all of the secular anti-Ben Ali coalition parties participated in these activities. As the talks took place mostly in exile (Haugbølle and Cavatorta, 2011, p. 338), repression at home and the consequent lack of communication made it difficult for these agreements to reach the level of local activists. After the uprising, Ennahda embarked on its own internal process of renegotiating its position on issues that had been previously agreed at the negotiations between activists of the Collectif. For example, discussions in the NCA about the role of religion in the state revealed divisions within the party and the existence within Ennahda of a deeply conservative wing. Some of its leading deputies, as well as party activists, defended the inclusion of the reference to sharia in the constitution, as I explained in Chapter 5. Chapter 4 concluded that suspicions prevailed among those drafting the document throughout the constitution-making process. Conflicts eventually developed to such an extent that most Tunisian secularists left the NCA and advocated the resignation of the Ennahda-led government. That they returned to the drafting body and that agreement materialized in Tunisia and not in Egypt was, therefore, more than likely due to causes other than the variance in the quality of Islamist-secularist relationships.

This thesis cannot rule out the possibility that Tunisian parties also acted on normative values and that they considered the common good (Bellin, 2013). Nonetheless, it does not seem from the empirical analysis that it was their primary incentive during the constitution-making process and could, therefore, explain why

constitutional agreement was reached. Ennahda showed willingness to compromise on several key points during that period. One such example is when it agreed to increase the power of the president under the constitution, despite its preference for a parliamentary system. A second example is when it accepted the initiative to move constitutional negotiations to the Consensus Commission, although in that body it had less authority compared to other constitutional commissions. Despite these examples, I found that the party always had a number of reasons for its willingness to compromise, including the growing criticism of the policies of its government. Therefore, I maintain that we should seek to understand why parties of the anti-authoritarian coalition found a way to compromise and so reach agreement, rather than relying on the “compromise mentality” (Marzouki, 2015) as an explanation.

The explanation that I propose, based on the evidence presented in this thesis, is that a situation in which neither Islamists nor secularists could best their rivals pushed parties towards negotiations amid intensifying conflicts and incentivized Ennahda to make further concessions on the text of the constitution. This situation was generated, above all, by shifts in the distribution of power between Ennahda and its secularist opponents, who attracted more popular support from 2013 onwards. This swing, as I argued in Chapter 4, occurred as initially fragmented secularist parties in the NCA came to coalesce more tightly in their opposition to Ennahda. This development was accompanied by the rising popularity of Nidaa Tounes, a new political party which emerged as a leading voice of the secularist opposition and whose popularity challenged Ennahda, tipping the scales of power even more in favour of those who opposed a stronger role for religion in politics. However, because of the inclusion of figures linked to the outgoing regime in Nidaa’s top ranks, the party should not be seen as a member of the anti-authoritarian coalition. Citizens and civil



society activists, who mobilized in support of secularist demands during the crisis in the summer of 2013, gave secularists even more influence. In parallel, other Islamist parties in the NCA disintegrated, which undermined the influence they could otherwise have exerted on the text of the constitution.

As a result, even though non-Islamist parties entered the NCA significantly weaker than Islamists in October 2011, they were able to gradually improve their position throughout the constitution-making process. By the time they came to negotiate with Ennahda about the resignation of its government through the platform of the Quartet-led National Dialogue in autumn 2013, they did so having become a political force comparable to that of the Islamists. As I demonstrated in Chapter 5 and 6, the interlinkage between the Dialogue and constitutional negotiations changed the situation within the NCA, endowing non-Islamist parties with a new strength that they could use to bend the constitution into an even more acceptable shape, despite the fact that they were still in the minority in the NCA.

This newly acquired balance between Islamist and secularist forces created a situation in which political parties across the religious divide understood there was no viable alternative to compromise given the political crisis of the summer of 2013. This involved, among other issues, settling on a constitutional text that was acceptable, at least to some extent, to everyone. According to a member of the opposition Nidaa Tounes, “everybody had to understand that they could not exclude the other party. You cannot exclude so significant part of the Tunisian people... It would be a civil war”.<sup>332</sup> A similar rationale was put forward by Ennahda’s Prime Minister, Ali Larayedh. According to him:

---

<sup>332</sup> Author Interview, Selim Ben Abdessalam, 24 November 2016, Tunis.

... the most important reason for the national dialogue was not the level of maturity, patriotism, and belief in peaceful solutions. This was certainly true, but the most important reason was the inability of antagonistic forces to find a solution to the crisis in another way. (...) What especially brought the [parties] to accept (these conditions of the national dialogue) was their inability to remove the government by force and our understanding that the situation had become untenable (M'Rad, 2015, pp. 59-60).

Ennahda's choice of pragmatism, which led the party to introduce other concessions in the period between the presentation of the penultimate draft of the constitution and the document finally adopted resulted, of course, from multiple motivating factors. One of these could well have been the party's historical experience of repression and the fear that the return of authoritarianism could prevent its direct involvement in politics (Marks, 2015; Marzouki, 2015; 2017, pp. 343-52). The military coup that in Egypt removed Islamist President Morsi in July 2013, just before the second political assassination in Tunisia drove citizens on to the streets, clearly cemented this choice, as I explained in Chapter 7 (see also Marks, 2015). Nevertheless, the empirical evidence that I gathered points to the importance of a situation in which there was no alternative to settling on the constitution, a state of affairs that was facilitated by the new balance of power between Islamist and secularist parties, for arriving at a constitution that was acceptable across the religious divide and consequently agreed.

This balance of power dynamic was missing in Egypt, as Chapter 4 revealed. This was not, however, because the Freedom and Justice Party was stronger than Ennahda. In fact, it won a similar share of the vote as Ennahda did in the first

democratic elections. The difference was that the overall Islamist voice was boosted by conservative Salafist forces, which emerged as the second strongest political actor after the revolution. It proved more difficult for non-Islamist parties to find common ground with them than was the case with the more pragmatic FJP. The last option of the secular-leaning parties in Egypt to counterbalance the Islamists was that of turning to the military. Nonetheless, more research is necessary to further confirm the relevance of the balance of power scenario in the Egyptian case.

These conclusions resonate with those of early transition literature which reasoned that situations where no party could impose unilateral solutions were most conducive to pacted transitions (O'Donnell and Schmitter, 1986, p. 44; Przeworski, 1988). Brownlee et al. (2015, p. 197), in their comparison of Arab Spring countries, put most explanatory weight on the differences in power distribution between Islamists and secularists when accounting for the contrasting outcomes following transition in Egypt and Tunisia. This thesis adds nuance to their findings by showing how the shifts in the distribution of power developed throughout time. Secularists came to counterbalance Ennahda only in the last phase of the constitution-writing process.

Finally, the thesis emphasizes that neither constitution-making processes nor constitutional agreements can be viewed as isolated islands. The experience of Tunisia showed that overall constitutional agreement was intertwined with other political deals. Ennahda's opponents were as interested in the constitution as in Ennahda losing power, and some, especially Nidaa Tounes, more than others. For the constitution to be voted through, Ennahda's text-related concessions had to be accompanied by its promise to withdraw from government and in its place install a technocrat cabinet. Disagreement in Egypt was clearly influenced by the complicated context of the

transition, which featured the dissolution of a popularly elected lower chamber of parliament, conflicts between the FJP, judges, and the military, and competition between Islamists and secularists over political influence. We are reminded that constitution-making is only one area of political contention during democratization, and that it plays out against a backdrop of wider struggles for political power.

## **8.2 Contributions to Literature**

I argued in Chapter 2 that, despite their shared agenda, scholars of constitution change rarely probed the contexts in which democratization occurred, and vice versa, students of democratization largely ignored the processes through which constitutions emerge after the breakdown of authoritarian rule. The main theoretical contribution of this thesis lies in bringing these scholarly perspectives together. By drawing on both these two traditions, this thesis offers contributions to the literature on democratization and constitution-making design, while also enhancing our understanding of the constitutional and democratic change processes that evolved in Egypt and Tunisia post-2011.

This thesis has made two distinctive contributions to the burgeoning body of research on constitution-making. First, it theoretically broke down the long and often abstract causal chains that have often been assumed in the large-N studies into the procedures that guide constitutional change. The qualitative analysis that this research employed enabled me to probe the individual building blocks of existing assumptions about the role of constitution-making designs in significant depth. In addition, I was able to identify those factors that are conducive to the implementation of inclusive designs. This analytical depth has been achieved by limiting the research scope by: (a) concentrating on the specific context of democratization; (b) taking into account only

one aspect of inclusion, that of political parties, as opposed to focusing on inclusiveness in more general terms; and, (c) by investigating constitutional agreement, which is a more proximate outcome compared to dependent variables more typically studied. These choices have their consequences for the generalizability of the proposed findings, which I note below. Nevertheless, I believe that this trade-off is a necessary one given our current state of knowledge about the role of constitution-making design during democratization, which, as I have shown, has been constrained by methodological and conceptual challenges that prevented authors in this field to draw more systematic patterns from comparisons of a larger number of cases.

Against the backdrop of scholarly and practitioner enthusiasm about the potentially positive effects of constitution-making processes, this research moderates the argument that constitution-making design matters. The empirical analysis proves that Elster (2012, p. 149) was right to view constitution-making design first of all as a tool to minimize potential problems, not more. There are, however, additional limitations to what even well-designed constitution-making processes can achieve. While being modest in his conclusions, Elster (2012, p. 149) expected rules and practices that guide how constitution-making unravels can function as “procedural safeguards”. Yet constitution-making designs are not neutral. They tend to reflect existing power relations, as I have proved in the cases of Egypt and Tunisia. This condition of endogeneity might considerably reduce their potential to constrain stronger political actors, and, therefore, their independent effect on the outcomes explored.

Second, the thesis has developed conceptual tools to study inclusiveness. They help to distinguish between two forms of horizontal, elite inclusion in constitution-making: substantive and formal. I have put this conceptual framework into practice,

showing how participants themselves perceive inclusive processes, and tracing the mechanisms through which the two types of inclusiveness contribute to constitutional agreement. The research revealed that while there are, indeed, benefits to members of parties being involved formally in constitution-making bodies, what political adversaries seek during democratization, and what conflicts with their opponents are about, is, ultimately, their ability to modify the constitution. By laying down and testing this conceptual framework, the thesis prepares ground for further inquiry into constitution-making design in terms of the inclusion of political parties across deep political divides. This aspect of inclusion has been largely overlooked in the literature, as authors have given more attention to the inclusion of citizens.

In addition, this thesis informs the debates about democratization by emphasizing that the configuration of macro-political institutions might not be the only, or even the most important, element of political negotiations in the aftermath of a breakdown of authoritarian rule. The experience of Egypt and Tunisia shows that disagreements about the role of religion in the state, and constitutional formulations specifying rights and freedoms, were essential parts of constitutional agreements reached and, as such, they deserve further attention.

The final contribution is empirical. The analysis that this thesis puts forward relies heavily on primary empirical material from two recent cases of democratic and constitutional change. The bulk of this data comes from semi-structured interviews with the key participants in these political events, which I collected in Tunis, Cairo and Prague in several rounds between 2014 and 2017. In total, this project builds on close to 60 qualitative interviews, in addition to systematic analysis of newspaper reports that informed the exploration of constitution-making in Egypt. This rich material allowed me not only to shed light on the link between inclusive constitution-

making design and constitutional agreement, but also to provide new insights into the question why constitutional agreement was secured in Tunisia but not in Egypt, after the 2010/11 uprisings.

### **8.3 Limitations and Future Research Avenues**

There are, of course, limitations to this research. The political situation in Egypt after the military intervention in July 2013 prevented me from returning to Cairo for further fieldwork. The interview material at my disposal relating to the Egyptian case was consequently not as complete as that which I gathered in Tunisia. While I sought to make up for this shortcoming by supplementing interview data with newspaper analysis, I could not replicate the empirical depth achieved in the Tunisian case study. However, I have been as open as possible about this limitation from the outset, and been very clear to denote instances when I lacked sufficient data to draw conclusions.

As already stated, there are limits to the generalizability of my findings. The conclusions drawn from this research are relevant, above all, for cases of constitutional change during democratization and where political forces face considerable divisions. Nonetheless, I believe that two elements of this research can inform the exploration of constitution-making design more broadly. These are, on the one hand, the conceptual tools that I developed to inquire into the inclusion of political parties in constitution-making. Both the conceptualization and operationalization of formal and substantive inclusiveness may be useful to scholars who study the involvement of actors other than political parties or who analyse other contexts than democratization in which constitutional change unfolds. On the other hand, researchers interested in exploring constitution-making may build on the identification of the factors that I singled out for their potential to influence what type of a constitution-making process would emerge,

as well as on the assessment of implications that the endogenous nature of constitution-making designs can have for their explanatory value.

This thesis has focused on constitutional agreement as the major outcome that is assessed rather than on democracy. Even though agreement on the new institutional framework might be a necessary step for achieving democracy, as maintained by scholars of democratic transition and consolidation, it does not guarantee democracy would, indeed, be attained. I found that constitution-making rules and practices that promote inclusiveness can encourage compromise, thus fostering agreement. Yet, compromises might not always yield the best constitutional texts and may result in ambiguous constitutions and flawed political institutions that undermine good governance and, ultimately, the consolidation and quality of democracy. The relationship between constitution-making design and democracy, thus, remains an open question.

Finally, considering how political parties participate in constitutional negotiations and shape the constitutional text, this thesis has tackled only one aspect of inclusiveness. Even as other actors played an important role in constitution-making processes in Egypt and Tunisia, such as civil society activists and revolutionaries, they remained at the margins of this research project. Other scholars have, in the meantime, explored how citizens are involved in constitutional change. I have argued in Chapter 2 that these two approaches are not mutually exclusive, but that the involvement of political elites and citizens can supplement each other in producing a constitution that is widely embraced and creates the basis for a flourishing democracy. A next logical step would be to integrate these two approaches into one research framework.



## **8.4 Final Reflections**

Policy documents and studies on constitution-making have suggested that constitutions written after conflict and authoritarian breakdown should be produced through inclusive processes, where a temporary majority cannot impose its own vision on others. This thesis supports this contention, showing that this component is critical, especially where political forces whose approval of the constitution is required are divided along religious lines. The real challenge, however, is to facilitate the adoption of an inclusive processes in cases where the distribution of power between parties is not conducive to inclusion, and where the main players do not think about the general good to an extent that suggests to them that they should implement an inclusive constitution-making design. With these conclusions in mind, does it make sense to recommend the adoption of an inclusive constitution-making design to countries embarking on the process of democratization? Or, is the fixation on constitution-making process a waste of time and effort, given the constraints on the implementation of a suitable design, and the limited impact it may have on constitutional agreement?

In March 2018, the United Nations Economic and Social Council (ECOSOC) met in Prague to discuss issues of participation and inclusion, which had been previously recognized by its member states as indispensable requirements for the achievement of the Sustainable Development Goals (SDG). The conference also brought together civil society representatives. Presentations by two of them, Professor of Urban and Regional planning at the Ryerson University in Toronto, Mitchel Kosny, and Tunisian women's rights activist, Hedia Belhadj, were inspirational for my reflections on the "best practices" in constitution-making. An advocate of participatory and inclusive housing involved in a large social housing project in Toronto, Kosny did not think the SDGs discernibly influenced what he and his team

did within their housing project. Nevertheless, he saw the guidelines as an important framework that gave their efforts a “validation at a higher level”. To women’s rights activist, Belhadj, the goals provided an “opportunity to push for certain issues”.<sup>333</sup> Analogously, putting the agenda of inclusive constitution-making processes on the table creates a normative backdrop that weaker actors can rely on when pressurizing majority parties to introduce more inclusive constitution-making rules. Insisting on the constitution-making “best practices” might make sense, yet we should be wary of what constitution-making processes and their design can do.

---

<sup>333</sup> This is based on the author’s notes taken during the 2018 ECOSOC Special Meeting “Towards sustainable, resilient and inclusive societies through the participation of all” which took place on 26 – 27 March 2018 in Prague. See ECOSOC, “2018 ECOSOC Special Meeting ‘Towards sustainable, resilient and inclusive societies through participation of all’”, available at: <https://www.un.org/ecosoc/en/node/3371101> [accessed 15 September 2018].

## Appendix I. Constitution-making and Transition Timeline, Tunisia

<b>2010</b>	
17 December	Tarak Bouazizi sets himself on fire in Sidi Bouzid, triggering protests.
<b>2011</b>	
14 January	General labour strike. Large demonstrations erupt throughout Tunisia. Ben Ali flees to Saudi Arabia.
24 July	Original date of the NCA elections.
23 October	Elections to the NCA are held.
22 November	The NCA meets for the first time.
10 December	Deputies adopt the OPPP, a law that serves as an interim constitution.
<b>2012</b>	
20 January	The NCA adopts Rules and Procedures that elaborate on the provisions that will guide the work on the constitution.
14 February	Work on the constitution begins in six constituent commissions.
June	The formation of the Nidaa Tounes is announced by its founder, Beji Caid Essebsi.
October	A Nidaa activist is murdered in Tatouine by members of the LPR.
<b>2013</b>	
6 February	Chokri Belaid, leader of WATAD and member of the PF, is assassinated by an unknown assailant.
19 February	Ennahda's government led by Hamadi Jebali resigns and is replaced by a cabinet led by Ali Larayedh (Ennahda).
15 April	The National Dialogue is launched by President Moncef Marzouki.
1 June	Fourth and final draft of the constitution is released, stirring controversy.
29 June	Consensus Commission begins its work.
25 July	Another outspoken leftist figure and PF member, Mohamed Brahmi, is assassinated in front of his house in Tunis. The murder is followed by large protests.
July	Around 60 deputies withdraw from the NCA in protest, some of them demanding the dissolution of the NCA. Opponents of the Ennahda-led government, accompanied by protesters, gather in front of the NCA building in Bardo and begin a sit-in.
6 August	NCA President, Mustapha Ben Jaafar, suspends all NCA activities.
12 September	The NCA resumes its work but many opposition MPs continue their boycott.
5 October	Most of the parties of the anti-Ben Ali coalition sign the National Dialogue Roadmap proposed by the mediating Quartet.
14 December	A new prime minister is announced.
<b>2014</b>	
3 – 26 January	The process of voting on and amending each article of the constitution is completed by a vote on the entire draft, which is adopted by 200 of 216 NCA deputies.
8 January	The NCA elects members of the independent election commission, ISIE.
28 January	The NCA approves a technocratic cabinet led by Mehdi Jomaa.
26 October	Parliamentary elections take place. Nidaa Tounes obtains 37.56 % of the vote. Ennahda comes second with 27.79 %.
21 December	Beji Caid Essebsi, leader of Nidaa Tounes, wins the presidential election.

## Appendix II. Constitution-making and Transition Timeline, Egypt

<b>2011</b>	
11 February	SCAF announces Hosni Mubarak has stepped down and suspends the 1971 Constitution.
14 February	SCAF appoints a committee of experts to propose constitutional amendments.
19 March	Voters approve amendments to the 1971 Constitution in a popular referendum.
30 March	SCAF issues a Constitutional Declaration, which specifies important constitution-making deadlines and procedures.
28 November – 11 January 2012	Three rounds of the parliamentary elections and additional run-offs take place.
<b>2012</b>	
3 March	First joint session of both parliamentary chambers begins with discussions on the selection criteria for the CA.
28 March	The first CA meets for the first time but is halted by walkouts.
10 April	Supreme Administrative Court suspends the first CA.
12 June	MPs elect members of the second CA at a joint parliamentary session.
14 June	The People's Assembly, the lower chamber of parliament, receives dissolution order from the SCAF after the Supreme Constitutional Court ruled it unconstitutional.
24 June	Mohamed Morsi (FJP) is elected president.
22 November	President Morsi releases a controversial Constitutional Declaration.
29 November	The Islamist-dominated CA is boycotted by non-Islamists but passes the new constitution.
15 – 22 December	After a popular referendum consisting of two rounds, voters approve the new constitution.
<b>2013</b>	
3 July	General Abdel Fatah El-Sisi removes President Morsi and suspends the 2012 Constitution.

### Appendix III. List of Interviews

Name	Affiliation	Date	Location
Samir Taïeb	Al-Massar	2 October 2015	Tunis
Salma Baccar	Al-Massar	30 June 2014	Tunis
Omar Chetoui	CPR	7 October 2015 25 November 2016 15 December 2016	Tunis
Ikbel Msada	CPR	10 July 2014 9 November 2016	Tunis
Heythem Belgacem	CPR	9 October 2015	Tunis
Mouldi Riahi	Ettakatol	8 October 2015 28 November 2016	Tunis
Mustafa Ben Jaafar	Ettakatol	7 October 2015	Tunis
Lobna Jeribi	Ettakatol	23 November 2016 14 December 2016	Tunis
Mehrezia Labidi	Ennahda	10 July 2014	Tunis
Badredine Abdelkafi	Ennahda	7 July 2014	Tunis
Zied Ladhari	Ennahda	9 July 2014	Tunis
Sabhi Atigue	Ennahda	15 November 2016	Tunis
Habib Khedher	Ennahda	25 November 2016	Tunis
Latifa Habachi	Ennahda	25 November 2016	Tunis
Amer Laarayedh	Ennahda	3 December 2016	Tunis
Mahmoud Baroudi	Democratic Alliance (formerly PDP)	24 June 2014	Tunis
Mohamed Gahbich	Democratic Alliance (formerly PDP)	25 June 2014	Tunis
Mongi Rahoui	WATAD	2 July 2014	Tunis
Hamma Hammami	PF	14 December 2016	Tunis
Rim Mahjoub	Afek Tounes	3 July 2014	Tunis
Mahmoud Ben Romdhane	Machrou Tounes (formerly Nidaa Tounes)	8 December 2016	Tunis
Mehdi Abdeljawad	Machrou Tounes (formerly Nidaa Tounes)	15 December 2016	Tunis
Selim Ben Abdessalam	Nidaa Tounes (formerly Ettakatol and Al-Massar)	6 June 2014 23 November 2016 24 November 2016	Tunis
Asmaa Nouira	Law Professor, HA	27 June 2014	Tunis
Chafik Sarsar	Law Professor, HA	3 November 2016	Tunis

Ghazi Gherairi	Law Professor, HA	9 November 2016	Tunis
Mohamed Fadhel Mahfoudh	Tunisian Order of Lawyers	15 December 2016	Tunis
Abdessatar Ben Moussa	LTDH	14 December 2016	Tunis
Anuar Ben Kaddour	UGGT	3 July 2014	Tunis
Haykel Ben Mahfoudh	Constitutional expert	26 June 2014	Tunis
Achref Aoudi	iWatch	8 July 2014	Tunis
Ghada Louchichi	Formerly Al-Bawsala	11 November 2016	Tunis
Zied Boussem	Formerly Al-Bawsala	16 November 2016	Tunis
Thierry Bresillon	Journalist	15 November 2016	Tunis
Amr Hamzawy	Egypt Freedom Party	8 October 2017	Prague
Farid Zahran	ESDP	14 August 2014	Cairo
Ahmed Said	FEP	12 August 2014	Cairo
Amr El-Shobaki	Al-Adl Party	11 August 2014	Cairo
Anwar Sadat	Reform and Development Party	6 August 2014	Cairo
Mohamed Abdel Alim Dawoud	Wafd Party	17 August 2014	Cairo
Mohamed Mohi El-Din	Ghad Al-Thawra Party	10 August 2014	Cairo
Mustafa Kamel El-Sayyid	Socialist Popular Alliance	7 August 2014	Cairo
Zaid Al-Ali	International IDEA	12 August 2014	Cairo
Youssef Auf	Constitutional expert	17 August 2014	Cairo

## Bibliography

### Primary Resources

(Documents, websites, and newspaper articles)

Abdul Majid, W. (2012) “al-qışsa al-kamila lima ‘rakat al-jam‘iyya al-ta’sysiyya (2-2)” (Full story of the Constituent Assembly Battle, 2-2), *Al-Shorouk*, 21 June 2012. Available at:

<http://www.shorouknews.com/columns/view.aspx?cdate=21062012&id=e0f322e9-e17c-42fa-89c0-39057201e099> [Accessed 28 August 2018].

AFP (2014) “Tunisie: Les sept élus du Courant Al Mahabba se retirent des débats sur la future Constitution”, 11 January 2014. Available at:

[https://www.huffpostmaghreb.com/2014/01/11/courant-mahabba-anc\\_n\\_4581792.html](https://www.huffpostmaghreb.com/2014/01/11/courant-mahabba-anc_n_4581792.html) [Accessed 21 August 2018].

Agence France Presse (2013) “Tunisia ‘Tamarod’ movement aims to dissolve parliament”, *The Daily Star Lebanon*, 4 July 2013. Available at:

<http://www.dailystar.com.lb/News/Middle-East/2013/Jul-04/222546-tunisia-ruling-islamist-party-dismisses-egypt-scenario.ashx> [Accessed 8 September 2018].

Ahram Online (2011) “MB official says constitution won’t be set by parliament majority but via consensus”, 26 December 2011. Available at:

<http://english.ahram.org.eg/NewsContent/1/64/30258/Egypt/Politics-/MB-official-says-constitution-wont-be-set-by-parli.aspx> [Accessed 12 September 2018].

Ahram Online (2012a) “8 constituent assembly members resign to protest Islamist dominance”, 25 March 2012. Available at:

<http://english.ahram.org.eg/NewsContent/1/64/37652/Egypt/Politics/-/constituent-assembly-members-resign-to-protest-Is.aspx> [Accessed 28 August 2018].

Ahram Online (2012b) “30 members of Egypt’s Constituent Assembly threaten to walkout”, 8 November 2012. Available at:

<http://english.ahram.org.eg/NewsContent/1/0/57537/Egypt/0/-members-of-Egyptys-Constituent-Assembly-threaten-w.aspx> [Accessed 28 August 2018].

Ahram Online (2012c) “Al Azhar withdraws from constituent assembly”, 29 March 2012. Available at:

<http://english.ahram.org.eg/NewsContent/1/64/38022/Egypt/Politics-/AlAzhar-withdraws-from-constituent-assembly-.aspx> [Accessed 28 August 2018].

Ahram Online (2012d) “April 6 leader freezes membership of Constituent Assembly”, 15 November 2012. Available at:

<http://english.ahram.org.eg/NewsContent/1/64/58254/Egypt/Politics-/April--leader-freezes-membership-of-Constituent-As.aspx> [Accessed 21 August 2018].

Ahram Online (2012e) “Broad satisfaction over Egypt’s Constituent Assembly’s deal”, *Ahram Online*, 10 June 2012. Available at:

<http://english.ahram.org.eg/NewsContent/1/64/44342/Egypt/Politics-/Broad-satisfaction-over-Egyptys-Constituent-Assembl.aspx> [Accessed 15 August 2017].

Ahram Online (2012f) “Brotherhood increases MP ratio for constituent assembly ahead of Saturday vote”, 17 March 2012. Available at:

<http://english.ahram.org.eg/NewsContent/1/64/36977/Egypt/Politics->



[/Brotherhood-increases-MP-ratio-for-constituent-ass.aspx](#) [Accessed 28 August 2018].

Ahram Online (2012g) “Egypt’s Constituent Assembly wins back four liberal members”, 29 September 2012. Available at:  
<http://english.ahram.org.eg/NewsContent/1/64/54204/Egypt/Politics-/Egypts-Constituent-Assembly-wins-back-four-liberal.aspx> [Accessed 29 August 2018].

Ahram Online (2012h) “English text of Morsi’s Constitutional Declaration”, 22 November 2012. Available at:  
<http://english.ahram.org.eg/NewsContent/1/64/58947/Egypt/Politics-/English-text-of-Morsis-Constitutional-Declaration-.aspx> [Accessed 21 August 2018].

Ahram Online (2012i) “Leftist, liberal parties to announce final stance on constitution timeframe”, 10 November 2012. Available at:  
<http://english.ahram.org.eg/NewsContent/1/64/57693/Egypt/Politics-/Leftist,-liberal-parties-to-announce-final-stance-.aspx> [Accessed 21 August 2018].

Ahram Online (2012j) “Morsi, political forces agree on 90% of the draft constitution: Spokesman”, 4 November 2012. Available at:  
<http://english.ahram.org.eg/NewsWorldCup/2018/57166.aspx> [Accessed 21 August 2018].

Ahram Online (2012k) “Official: The 100 members of Egypt’s revamped Constituent Assembly”, 12 June 2012. Available at:  
<http://english.ahram.org.eg/NewsContent/1/64/44696/Egypt/Politics-/Official-The--members-of-Egyptys-revamped-Constitutue.aspx> [Accessed 29 August 2018].

- Ahram Online (2012l) “On verge of consensus, rifts reemerge over Egypt’s Constituent Assembly”, 11 June 2012. Available at:  
<http://english.ahram.org.eg/NewsContent/1/64/44501/Egypt/Politics-/On-verge-of-consensus,-rifts-reemerge-over-Egypt-.aspx> [Accessed 28 August 2018].
- Ahram Online (2012m) “Revolutionaries call for weekend protests against rules for drafting constitution”, 22 March 2012. Available at:  
<http://english.ahram.org.eg/NewsContent/1/64/37421/Egypt/Politics-/Revolutionaries-call-for-weekend-protests-against-.aspx> [Accessed on 28 August 2012].
- Al-Ahram Daily (2012n) “Interview with Khairat El-Shater”, *Ahram Online*, 7 April 2012. Available at:  
<http://english.ahram.org.eg/NewsContentPrint/1/0/39511/Egypt/0/Interview-with-Khairat-ElShater.aspx> [Accessed 15 August 2017].
- Al-Arabiya (2012) “Mursi, Brotherhood, Hijacking Egypt: National Salvation Front”, 9 December 2012. Available at:  
<https://english.alarabiya.net/articles/2012/12/09/254213.html> [Accessed 2 April 2018].
- Al-Jazeera (2012) “Thousands rally in Cairo against constitution”, 1 December 2012. Available at:  
<https://www.aljazeera.com/news/middleeast/2012/11/2012113016175317311.html> [Accessed 21 August 2018].
- Al-Jazeera (2013) “Transcript: Egypt’s Army Statement”, *Aljazeera*, 3 July 2013. Available at:

<http://www.aljazeera.com/news/middleeast/2013/07/201373203740167797.html> [Accessed 25 July 2016].

Amara, T. (2012) “Tunisian ex-PM launches secular party to challenge Islamists”, *Reuters*, 16 June 2012. Available at: <https://www.reuters.com/article/us-tunisia-party/tunisian-ex-pm-launches-secular-party-to-challenge-islamists-idUSBRE85F0I220120616> [Accessed 3 September 2018].

April 6 Movement (n.d.) “Egyptians urged to vote ‘no’ in the referendum”, *A world to win*. Available at: <http://aworldtowin.net/frontline/April6.html> [Accessed 12 September 2018].

Arab West Report (n.d.) “Mission statement”. Available at: <https://www.arabwestreport.info/en/mission-statement-0> [Accessed 29 August 2018].

Associated Press (2014) “Tunisia Signs New Constitution”, *The Guardian*, 27 January 2014. Available at: <https://www.theguardian.com/world/2014/jan/27/tunisia-signs-new-constitution-progressive> [Accessed 12 August 2018].

BBC (2010) “Mohammed ElBaradei Urges Egypt Election Boycott”, *BBC News*, 7 September 2010. Available at: <https://www.bbc.com/news/world-middle-east-11212449> [Accessed 12 August 2018].

BBC (2012a) “Egyptian voters back new constitution in a referendum”, 25 December 2012. Available at: <https://www.bbc.co.uk/news/world-middle-east-20842487> [Accessed 5 September 2018].

BBC (2012b) “Profile: Egypt’s National Salvation Front”, 10 December 2012. Available at: <https://www.bbc.com/news/world-middle-east-20667661> [Accessed 5 September 2018].

- BBC (2013a) “Egypt opposition rejects Mohammed Morsi dialogue call”, 28 January 2013. Available at: <https://www.bbc.co.uk/news/world-africa-21234543> [Accessed 21 August 2018].
- BBC (2013b) “Egyptian army suspends constitution”, 3 July 2013. Available at: <http://www.bbc.co.uk/news/av/world-middle-east-23174059/egyptian-army-suspends-constitution> [Accessed 21 August 2018].
- BBC (2013c) “Tunisian politician Mohamed Brahmi assassinated”, 25 July 2013. Available at: <https://www.bbc.com/news/world-africa-23452979> [Accessed 28 August 2018].
- BBC News (2011) “Tunisian Islamist Leader Rachid Ghanouchi returns home”, 30 January 2011. Available at: <https://www.bbc.co.uk/news/world-africa-12318824> [Accessed 3 September 2018].
- Beaumont, P. (2012) “Mohamed Morsi signs Egypt new constitution law”, *The Guardian*, 26 December 2012. Available at: <https://www.theguardian.com/world/2012/dec/26/mohamed-morsi-egypt-constitution-law> [Accessed 21 August 2018].
- Blair, E., P. Taylor, and T. Perry (2013) “Special report: How the Muslim Brotherhood really lost Egypt”, Reuters, 25 July 2013. Available at: <https://www.reuters.com/article/us-egypt-mistakes-specialreport/special-report-how-the-muslim-brotherhood-lost-egypt-idUSBRE96O07H20130725> [Accessed 14 September 2018].
- Blaise, L. (2013) “La loi d’immunisation de la révolution votée à l’assemblée”, *Nawaat*, 28 June 2013. Available at: <https://nawaat.org/portail/2013/06/28/la-loi-dimmunisation-de-la-revolution-ou-la-difficulte-de-sortir-du-processus-revolutionnaire/> [Accessed 21 August 2018].

- Bradley, M. (2011) “Egypt’s Former Ruling Party Dissolved – But Not Defunct”, *The Wall Street Journal*, 18 April 2011. Available at: <https://www.wsj.com/articles/SB10001424052748703702004576269172473506278> [Accessed 3 September 2018].
- Brookings (2012) “Drafting the Constitution: Defining Post-Revolutionary Egypt”, *Brookings Doha Center*, 14 November 2012. Available at: <https://www.brookings.edu/events/drafting-the-constitution-defining-post-revolutionary-egypt/> [Accessed 21 August 2018].
- Bsili, A. (2016) “Beginning and organization of the work of the constituent committees”, *UNDP*, Constitution in Tunisia, Part 2, 26 September 2016. Available at: <http://www.arabstates.undp.org/content/dam/rbas/doc/Compendium%20English/Part%202/12%20Adel%20Bsili%20EN.pdf> [Accessed 17 August 2018].
- Business News (2011) “La Tunisie dotée d’une ‘mini constitution’”, 11 December 2011. Available at: <http://www.businessnews.com.tn/La-Tunisie-dotée-d'une-«-mini-constitution-»,520,28124,1> [Accessed 8 September 2018].
- Byrne, E. (2013) “Tunisian opposition leader shot dead”, *The Guardian*, 7 February 2013. Available at: <https://www.theguardian.com/world/2013/feb/06/tunisian-politician-shot-dead> [Accessed 27 August 2018].
- Cherif, Y. (2014) “Democracy in the making”, *Majalla*, 26 February 2014. Available at: <http://eng.majalla.com/2014/02/article55248709> [Accessed 3 September 2018].
- CNN Wire Staff (2011a) “About three hundred people killed in original Tunisian uprising, U.N. report”, *CNN*, 21 May 2011. Available at:

<http://edition.cnn.com/2011/WORLD/africa/05/21/tunisia.un/> [Accessed 3 September 2018].

CNN Wire Staff (2011b) “Egypt’s military dissolves parliament, suspends constitution”, *CNN*, 13 February 2011. Available at:  
<http://edition.cnn.com/2011/WORLD/meast/02/13/egypt.revolution/>  
[Accessed 3 September 2018].

CNN Wire Staff (2011c) “Muslim Brotherhood: ‘We are not seeking power’”, *CNN*, 10 February 2011. Available at:  
<http://edition.cnn.com/2011/WORLD/africa/02/09/egypt.muslim.brotherhood/index.html> [Accessed 3 September 2018].

CNN Wire Staff (2011d) “Would-be prime minister no stranger to Egyptian Government”, *CNN*, 25 November 2011. Available at:  
<http://edition.cnn.com/2011/11/24/world/meast/egypt-ganzouri-profile/index.html> [Accessed 3 September 2018].

ConstitutionNet (2011a) “Draft Declaration of Fundamental Principles for the New Egyptian State”, 2011. Available at:  
[http://www.constitutionnet.org/sites/default/files/2011.11\\_-\\_constitutional\\_principles\\_document\\_english\\_0.pdf](http://www.constitutionnet.org/sites/default/files/2011.11_-_constitutional_principles_document_english_0.pdf) [Accessed 12 September 2018].

ConstitutionNet (2011b) “The Tunisian National Constituent Assembly. Rules of Procedure”, *International IDEA*, 16 December 2011. Available at:  
[http://www.constitutionnet.org/sites/default/files/constituent\\_assemblys\\_rules\\_of\\_procedure\\_-\\_english-final.pdf](http://www.constitutionnet.org/sites/default/files/constituent_assemblys_rules_of_procedure_-_english-final.pdf) [Accessed 27 August 2018].

ConstitutionNet (2012a) “Draft Constitution of the Tunisian Republic”, *International IDEA*, 22 April 2012. Available at:

[http://www.constitutionnet.org/sites/default/files/tunisian\\_constitution-22\\_april\\_2013-\\_third\\_draft\\_-english-idea.pdf](http://www.constitutionnet.org/sites/default/files/tunisian_constitution-22_april_2013-_third_draft_-english-idea.pdf) [Accessed 21 August 2019].

ConstitutionNet (2012b) “Draft Constitution of the Republic of Tunisia”,

*International IDEA*, 14 December 2012. Available at:

[http://www.constitutionnet.org/sites/default/files/tunisian\\_constitution14\\_dec\\_2012-english-undp.pdf](http://www.constitutionnet.org/sites/default/files/tunisian_constitution14_dec_2012-english-undp.pdf) [Accessed 21 August 2018].

ConstitutionNet (2012c) “The Constitution of Arab Republic of Egypt”,

*International IDEA*, 30 November 2012. Available at:

[http://www.constitutionnet.org/sites/default/files/final\\_constitution\\_30\\_nov\\_2012\\_-english\\_-idea.pdf](http://www.constitutionnet.org/sites/default/files/final_constitution_30_nov_2012_-english_-idea.pdf) [Accessed 21 August 2018].

ConstitutionNet (2013) “Draft Constitution of the Tunisian Republic”, *International*

*IDEA*, 1 June 2013. Available at:

[http://www.constitutionnet.org/sites/default/files/tunisian\\_constitution-1\\_june\\_2013\\_-\\_fourth\\_draft\\_-english-idea.pdf](http://www.constitutionnet.org/sites/default/files/tunisian_constitution-1_june_2013_-_fourth_draft_-english-idea.pdf) [Accessed 21 August 2018].

ConstitutionNet (2014) “The Constitution of the Tunisian Republic”, *International*

*IDEA*, 26 January 2014. Available at:

[http://www.constitutionnet.org/sites/default/files/2014.01.26\\_-\\_final\\_constitution\\_english\\_idea\\_final.pdf](http://www.constitutionnet.org/sites/default/files/2014.01.26_-_final_constitution_english_idea_final.pdf) [Accessed 21 August 2018].

ConstitutionNet, (n.d.) “The 2011 Constitutional Declaration”, *International IDEA*.

Available at: [http://www.constitutionnet.org/sites/default/files/march\\_2011-\\_egypt\\_interim\\_constitution-english.pdf](http://www.constitutionnet.org/sites/default/files/march_2011-_egypt_interim_constitution-english.pdf) [Accessed 21 August 2018].

Dahmani, F. (2013) “Que se sont dit Rached Ghannouchi et Béji Caïd Essebsi à

Paris ?”, *JeuneAfrique*, 20 August 2013. Available at:

<http://www.jeuneafrique.com/169039/politique/que-se-sont-dit-rached-ghannouchi-et-b-ji-caed-essebsi-paris/> [Accessed 3 September 2018].

- Daily News Egypt (2012) “Abdel-Maguid: ‘I believe we will have a constitution ready to put to a public referendum within six weeks to two months’”, 30 July 2012. Available at: <https://dailynewsegypt.com/2012/07/30/abdel-maguid-i-believe-we-will-have-a-constitution-ready-to-be-put-to-a-public-referendum-within-six-weeks-to-two-months/> [Accessed 29 August 2018].
- DRI (n.d.) “Constitutions”. Available at: [http://democracy-reporting.org/?page\\_id=279](http://democracy-reporting.org/?page_id=279) [Accessed 24 August 2016].
- Economist (2014) “Our country of the year. Hope springs”, 17 December 2014. Available at: <https://www.economist.com/leaders/2014/12/17/hope-springs> [Accessed 10 August 2018].
- ECOSOC (n.d.) “2018 ECOSOC Special Meeting ‘Towards sustainable, resilient and inclusive societies through participation of all’”. Available at: <https://www.un.org/ecosoc/en/node/3371101> [Accessed 15 September 2018].
- Egypt Independent (2012) “People’s Assembly receives dissolution order from SCAF”, 15 June 2012. Available at: <http://www.egyptindependent.com/peoples-assembly-receives-dissolution-order-scaf/> [Accessed 28 August 2018].
- Egyptian Election Watch (2011) “Democratic Alliance (Freedom and Justice)”, *Ahram Online*, 18 November 2011. Available at: <https://www.middleeasteye.net/columns/why-egypt-failed-be-democracy-1109856918> [Accessed 31 August 2018].
- El-Din, G.E. (2011) “Divided Again”, *Al-Ahram Weekly*, June 2011. Available at: <http://weekly.ahram.org.eg/2011/1057/eg7.htm> [Accessed November 2014].
- El-Din, G.E. (2012a) “Debate intensifies over fundamental rights and freedoms in Egypt new constitution”, *Ahram Online*, 1 September 2012. Available at:



- <http://english.ahram.org.eg/NewsContent/1/64/51711/Egypt/Politics-/Debate-intensifies-over-fundamental-rights-and-fre.aspx> [Accessed 21 August 2018].
- El-Din, G.E. (2012b) “Egypt’s liberal forces take aim at draft constitutional articles”, *Ahram Online*, 16 October 2012. Available at: <http://english.ahram.org.eg/NewsContent/1/64/55781/Egypt/Politics-/Egyptys-liberal-forces-take-aim-at-draft-constituti.aspx> [Accessed 29 August 2018].
- El-Din, G.E. (2012c) “Fierce debates plague final drafts of Egypt’s constitution”, *Ahram Online*, 20 August 2012. Available at: <http://english.ahram.org.eg/NewsContent/1/64/50821/Egypt/Politics-/Fierce-debates-plague-final-drafts-of-Egyptys-const.aspx> [Accessed 21 August 2018].
- El-Din, G.E. (2012d) “Islamist-liberal cold war over Egypt’s constitution contained but not over”, *Ahram Online*, 5 October 2012. Available at: <http://english.ahram.org.eg/NewsWorldCup/2018/54817.aspx> [Accessed 21 August 2018].
- El-Din, G.E. (2012e) “Salafis and liberals exchange fire over Egypt’s draft constitution”, *Ahram Online*, 22 October 2012. Available at: <http://english.ahram.org.eg/NewsWorldCup/2018/56275.aspx> [Accessed 21 August 2018].
- El-Din, G.E. (2012f) “The constitution-drafting assembly faces fatal threats”, *Ahram Online*, 19 November 2012. Available at: <http://english.ahram.org.eg/NewsContent/1/64/58539/Egypt/Politics-/The-constitutiondrafting-assembly-faces-fatal-thre.aspx> [Accessed 21 August 2018].

- El-Gundy, Z. (2011) “Debate rages over constitution or elections first options,” *Ahram Online*, 23 June 2011. Available at: <http://english.ahram.org.eg/NewsContentPrint/1/0/14841/Egypt/0/Debate-rages-over-Constitution-or-elections-first-.aspx> [Accessed 12 September 2018].
- El-Gundy, Z. (2012) “Liberals, leftists stage 2nd walkout from Egypt’s Constituent Assembly”, *Ahram Online*, 11 June 2012. Available at: <http://english.ahram.org.eg/NewsContent/1/64/44590/Egypt/Politics-/Liberals,-leftists-stage-nd-walkout-from-Egypt-Co.aspx> [Accessed 28 August 2018].
- El-Hamdi, M. (2016) “Dissolving tensions between the groups and resuming the work of the Constituent Assembly. The Transitional experiment in Tunisia: between conflict and agreement”, *UNDP*, Constitution in Tunisia, Part 2, 26 September 2016. Available at: <http://www.arabstates.undp.org/content/dam/rbas/doc/Compendium%20English/Part%202/24%20Mohamed%20El%20Hamdi%20EN.pdf> [Accessed 27 August 2018].
- ElBaradei, M. (2012) “Morsi has left Egypt on the brink”, *Financial Times*, 3 December 2012. Available at: <https://www.ft.com/content/247950f0-3b2f-11e2-b111-00144feabdc0> [Accessed 31 August 2018].
- Election Guide (2011) “March 19, 2011, Arab Republic of Egypt referendum”, *IFES*, 19 March 2011. Available at: <http://www.electionguide.org/elections/id/165/> [Accessed 21 August 2018].
- Election Guide (2014) “Tunisian Republic, Election for Majlis nawaab ash-aa’b, Tunisian Assembly of People’s Representatives”, *IFES*, 26 October 2014.

Available at: <http://www.electionguide.org/elections/id/2746/> [Accessed 3 September 2018].

Essebsi, B.C. (2012) “Tunisie. Béji Caïd Essebsi monte au créneau et appelle à rectifier le tir”, *Global Net*, 26 January 2012. Available at: <http://www.gnet.tn/temps-fort/tunisie-beji-caid-essebsi-monte-au-creneau-et-appelle-a-rectifier-le-tir/id-menu-325.html> [Accessed 27 August 2018].

Ezzat, D. (2011) “Egyptian Islamists, along with NDP, campaign hard for a ‘yes’ vote on constitutional amendments”, *Ahram Online*, 17 March 2011. Available at: <http://english.ahram.org.eg/NewsContent/1/0/7971/Egypt/0/Egyptian-Islamists,-along-with-NDP,-campaign-hard-.aspx> [Accessed 3 September 2018].

Fadel, L. (2012) “Disqualified Egyptian candidate says military rules don’t intent to cede power”, *Washington Post*, 18 April 2012. Available at: [https://www.washingtonpost.com/world/middle\\_east/egypts-disqualified-presidential-candidate-says-military-rulers-have-no-intention-of-handing-over-rule/2012/04/18/gIQAt95UQT\\_story.html?noredirect=on&utm\\_term=.3feb2f05bbd1](https://www.washingtonpost.com/world/middle_east/egypts-disqualified-presidential-candidate-says-military-rulers-have-no-intention-of-handing-over-rule/2012/04/18/gIQAt95UQT_story.html?noredirect=on&utm_term=.3feb2f05bbd1) [Accessed 29 August 2018].

Fayed, S. (2012) “Liberals, Islamists tussle over Egypt constitution”, *Reuters*, 27 March 2012. Available at: <https://www.reuters.com/article/us-egypt-constitution/liberals-islamists-tussle-over-egypt-constitution-idUSBRE82Q0OA20120327> [Accessed 28 August 2018].

“Final Communiqué of the sessions of national dialogue” (translated from original Arabic), *personal archive of Mouldi Riahi*, 15 May 2013.

Freedom House (2012) “Freedom in the world 2012: Tunisia”. Available at:  
<https://freedomhouse.org/report/freedom-world/2012/tunisia> [Accessed 30 August 2018].

Freedom House (2013) “Freedom in the world 2013: Egypt”. Available at:  
<https://freedomhouse.org/report/freedom-world/2013/egypt> [Accessed 22 July 2016].

Freedom House (2014) “Freedom in the world 2014: Egypt”. Available at:  
<https://freedomhouse.org/report/freedom-world/2014/egypt> [Accessed 25 July 2016].

Freedom House (2015) “Freedom in the world 2015: Tunisia”. Available at:  
<https://freedomhouse.org/report/freedom-world/2015/tunisia> [Accessed 22 July 2016].

Guerfali, R. (2013), “Loi constitutionnelle n°6-2011 du 16 décembre 2011, relative à l’organisation provisoire des pouvoirs publics”, *Nawaat*, 14 February 2013. Available at: <https://nawaat.org/portail/2013/02/14/traduction-fr-loi-constitutionnelle-n6-2011-du-16-decembre-2011-relative-a-lorganisation-provisoire-des-pouvoirs-publics/> [Accessed 28 August 2018].

Hamzawy, A. (2017) “Seven years on: Why Egypt failed to become a democracy?”, *Middle East Eye*, 12 December 2017. Available at:  
<https://www.middleeasteye.net/columns/why-egypt-failed-be-democracy-1109856918> [Accessed 31 August 2018].

Hill, E. (2010) “Primer: Egypt’s political parties”, *Al-Jazeera*, 24 November 2010. Available at:  
<https://www.aljazeera.com/news/middleeast/2010/11/20101118132548312750.html> [Accessed 8 September 2018].

- HRW (2014) “Tunisia: Strengthen new constitution’s human rights protection”, *Human Rights Watch*, 3 January 2014. Available at: <https://www.hrw.org/news/2014/01/03/tunisia-strengthen-new-constitutions-human-rights-protection> [Accessed 21 August 2018].
- Human Rights Watch (2011) “Egypt: Retry or free 12,000 after unfair military trials”, 10 September 2011. Available at: <http://www.hrw.org/news/2011/09/10/egypt-retry-or-free-12000-after-unfair-military-trials> [Accessed 3 September 2018].
- IDEA (n.d.) “History of International IDEA’s work on constitution building”. Available at: [http://www.idea.int/cbp/history\\_of\\_cbp.cfm](http://www.idea.int/cbp/history_of_cbp.cfm) [Accessed 24 August 2016].
- Interpeace (n.d.) “Constitution-making”. Available at: <https://www.interpeace.org/what-we-do/constitution-making-for-peace/> [Accessed 12 August 2018].
- Interpeace (n.d.) “History”. Available at: <https://www.interpeace.org/who-we-are/history/> [Accessed 12 August 2018].
- IRI (2012) “Survey of Tunisian Public Opinion”, *International Republican Institute and ELKA Consulting*, 1-2 October 2012. Available at: <http://www.iri.org/sites/default/files/2013%20December%203%20Survey%20of%20Tunisian%20Public%20Opinion%2C%20October%201-12%2C%202013.pdf> [Accessed 3 September 2018].
- Kingsley, P. (2013) “Tamarod campaign gathers momentum among Egypt’s opposition”, *The Guardian*, 27 June 2013. Available at: <https://www.theguardian.com/world/2013/jun/27/tamarod-egypt-morsi-campaign-opposition-resignation> [Accessed 8 September 2018].

- Kirkpatrick, D.D. (2011) “Tunisia leader flees and prime minister claims power”, *New York Times*, 14 January 2011. Available at:  
<https://www.nytimes.com/2011/01/15/world/africa/15tunis.html?pagewanted=1> [Accessed 3 September 2018].
- Kirkpatrick, D.D. (2012a) “Named Egypt’s winner, Islamist makes history”, *New York Times*, 24 June 2012. Available at:  
<http://www.nytimes.com/2012/06/25/world/middleeast/mohamed-morsi-of-muslim-brotherhood-declared-as-egypts-president.html> [Accessed 28 August 2018].
- Kirkpatrick, D.D. (2012b) “Opponents and Supporters of Egypt’s President Clash”, *New York Times*, 12 October 2012. Available at:  
<https://www.nytimes.com/2012/10/13/world/middleeast/mohamed-morsis-critics-and-backers-clash-in-cairos-tahrir-square.html> [Accessed 29 August 2018].
- Kirkpatrick, D.D., and El Sheikh, M. (2012) “President Morsi in Egypt Seizes New Powers”, *New York Times*, 22 November 2012. Available at:  
<http://www.nytimes.com/2012/11/23/world/middleeast/egypts-president-morsi-gives-himself-new-powers.html> [Accessed 21 August 2018].
- Kirkpatrick, D.D., and K. Fahim (2011) “In Egypt, a panel of jurists is given the task of revising the country’s constitution”, *New York Times*, 15 February 2011. Available at:  
[http://www.nytimes.com/2011/02/16/world/middleeast/16egypt.html?pagewanted=2&\\_r=5&hp](http://www.nytimes.com/2011/02/16/world/middleeast/16egypt.html?pagewanted=2&_r=5&hp) [Accessed 3 September 2018].

- Knell, Y. (2012) “What will Salafists’ election success mean for Egypt?”, *BBC News*, 12 December 2012. Available at: <https://www.bbc.co.uk/news/world-middle-east-16112833> [Accessed 3 September 2018].
- Kottoor, N. (2014) “Tunisia’s Ennahda and Ettakatol women MPs celebrate”, *BBC News*, 28 January 2014. Available at: <https://www.bbc.com/news/world-africa-25916831> [Accessed 21 August 2018].
- Leaders (2011) “La liste complète des membres du Conseil de Haute Instance pour la réalisation de la révolution”, 7 April 2011. Available at: <http://www.leaders.com.tn/article/4773-la-liste-complete-des-membres-du-conseil-de-la-haute-instance-pour-la-realisation-des-objectifs-de-la-revolution> [Accessed 3 September 2018].
- Leaders (2013) “UGGT appelle à la dissolution de gouvernement et fixe un agenda pour l’adoption de la constitution”, 30 July 2013. Available at: <http://www.leaders.com.tn/article/11953-l-uggt-appelle-a-la-dissolution-du-gouvernement-et-fixe-un-agenda-pour-l-adoption-de-la-constitution> [Accessed 28 August 2018].
- Legislation.tn (2011) “Décret-loi n° 2011-14 du 23 Mars 2011, portant organisation provisoire des pouvoirs publics”, 23 March 2011. Available at: <http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2011/2011F/020/TF2011142.pdf> [Accessed 12 September 2018].
- L’Obs (2011) “Sondage : les Tunisiens méfiants mais optimistes”, 14 June 2011. Available at: <https://www.nouvelobs.com/monde/20110614.OBS5103/sondage-les-tunisiens-mefiants-mais-optimistes.html> [Accessed 12 September 2018].

- MacFarquhar, N. (2011) "Egyptian voters approve constitutional change", *New York Times*, 20 March 2011. Available at:  
<http://www.nytimes.com/2011/03/21/world/middleeast/21egypt.html?pagewanted=all> [Accessed 3 September 2018].
- Mahjoub, R. (2016) "From division to consensus: The role and the contribution of the Consensus Committee", *UNDP*, Constitution of Tunisia, Part 2, 26 September 2016. Available at:  
<http://www.arabstates.undp.org/content/dam/rbas/doc/Compendium%20English/Part%202/25%20Rym%20Mahjoub%20EN.pdf> [Accessed 28 August 2018].
- Mandraud, I. (2011) "La Tunisie va connaître de vraies élections libres", *Le Monde*, 20 April 2011. Available at:  
[https://www.lemonde.fr/tunisie/article/2011/04/20/la-tunisie-va-connaître-de-vraies-elections-libres\\_1510254\\_1466522.html](https://www.lemonde.fr/tunisie/article/2011/04/20/la-tunisie-va-connaître-de-vraies-elections-libres_1510254_1466522.html) [Accessed 12 September 2018].
- Marsad (2014) "Adoption de la constitution de la République tunisienne dans sa totalité", *Al-Bawsala*, 26 January 2014. Available at:  
<https://majles.marsad.tn/fr/vote/52e598b212bdaa593ad566f2> [Accessed 21 August 2018].
- Marsad (n.d.) "L'Assemblée", *Al-Bawsala*. Available at:  
<https://majles.marsad.tn/fr/assemblee/commissions> [Accessed 23 August 2018].
- Marsad (n.d.) "Votes sur la constitution", *Al-Bawsala*. Available at:  
<https://majles.marsad.tn/fr/votes> [Accessed 21 August 2018].



- MENA (2012) “Moussa expects return of withdrawn Constituent Assembly members”, *Egypt Independent*, 28 June 2012. Available at: <https://www.egyptindependent.com/moussa-expects-return-withdrawn-constituent-assembly-members/> [Accessed 28 August 2018].
- MENA and Ahram Online (2012) “Liberal Wafd Party quits Egypt’s constitution-drafting body”, 17 November 2012. Available at: <http://english.ahram.org.eg/NewsContent/1/64/58417/Egypt/Politics-/Liberal-Wafd-Party-quits-Egypt-constitutiondrafti.aspx> [Accessed 21 August 2018].
- Mihaila, L. (2012) “The 85 people deciding the fate of Egypt”, *Daily News Egypt*, 4 December 2012. Available at: <https://dailynewsegypt.com/2012/12/04/the-85-people-deciding-the-fate-of-egypt/> [Accessed 28 August 2018].
- Mourad, S. (2012) “Court ruling brings Egypt constitutional crisis to climax”, *Ahram Online*, 10 April 2012. Available at: <http://english.ahram.org.eg/NewsContent/1/64/38983/Egypt/Politics-/Court-ruling-brings-Egypt-constitutional-crisis-t.aspx> [Accessed 28 August 2018].
- NobelPrize (2015) “The Nobel Peace Prize for 2015”, 10 October 2015. Available at: <https://www.nobelprize.org/prizes/peace/2015/press-release/> [Accessed 5 September 2018].
- PAIS (n.d.) “Ethics”, Politics and International Studies, University of Warwick. Available at: <https://warwick.ac.uk/fac/soc/pais/currentstudents/masters/academic/mahandbook/regs/ethics> [Accessed 22 August 2018].
- Rashwan, N.H. (2012) “Political groups challenge legality of MPs’ inclusion in constituent assembly”, *Ahram Online*, 7 March 2012. Available at:

- <http://english.ahram.org.eg/NewsContent/1/64/36227/Egypt/Politics-/Political-groups-challenge-legality-of-MPs-inclusi.aspx> [Accessed 28 August 2018].
- Reuters Staff (2012) “Secular politician killed in southern Tunisia clashes”, *Reuters*, 18 October 2012. Available at: <https://af.reuters.com/article/commoditiesNews/idAFL5E8LIN9E20121018> [Accessed 27 August 2018].
- Ryan, Y. (2011) “The tragic life of a street vendor”, *Al-Jazeera*, 20 January 2011. Available at: <https://www.aljazeera.com/indepth/features/2011/01/201111684242518839.html> [Accessed 3 September 2018].
- Sabry, B. (2012) “Fight club: A concise guide to the controversies over Egypt’s new constitution”, *Ahram Online*, 31 July 2012. Available at: <http://english.ahram.org.eg/NewsContent/1/64/49044/Egypt/Politics-/Fight-club-A-concise-guide-to-the-controversies-ov.aspx> [Accessed 21 August 2018].
- Saleh, H. (2011) “ElBaradei to launch Bill of Rights for Egypt”, *Financial Times*, 19 June 2011. Available at: [http://www.ft.com/cms/s/0/13acd2c8-9a91-11e0-bab2-00144feab49a.html?ft\\_site=falcon&desktop=true#axzz4pj5uDdYL](http://www.ft.com/cms/s/0/13acd2c8-9a91-11e0-bab2-00144feab49a.html?ft_site=falcon&desktop=true#axzz4pj5uDdYL) [Accessed 12 September 2018].
- Saleh, Y. and S. Fayed (2012) “Egypt’s opposition protests against constitution”, *Reuters*, 18 December 2012. Available at: <http://www.reuters.com/article/us-egypt-politics-idUSBRE8BH0LY20121218> [Accessed 26 July 2016].

- Sallam, H. (2011) "Elections in the midst of revolution.", *Jadaliyya*, 28 November 2011. Available at: <http://www.jadaliyya.com/Details/24717/Elections-in-the-Midst-of-Revolution> [Accessed 21 August 2018].
- Sallon, H. (2013) "Tunisie : qui sont les principaux partis politiques ?", *Le Monde Afrique*, 13 February 2013. Available at: [https://www.lemonde.fr/tunisie/article/2013/02/13/tunisie-qui-sont-les-principaux-partis-politiques\\_1831005\\_1466522.html](https://www.lemonde.fr/tunisie/article/2013/02/13/tunisie-qui-sont-les-principaux-partis-politiques_1831005_1466522.html) [Accessed 3 September 2018].
- Samak, D. (2012) "Egypt's National Salvation Front to vote against constitution", *Ahram Online*, 12 December 2012. Available at: <http://english.ahram.org.eg/NewsContentP/1/60359/Egypt/Egypt's-National-Salvation-Front-to-vote-against-c.aspx> [Accessed 25 July 2016].
- Sbouai, S. (2014) "Ikbal Msadaa: Députée CPR, qui ne se représente pas", *Inkdyfada*, 15 October 2014. Available at: <http://inkyfada.com/2014/10/ikbal-msadaa-deputes-cpr-tnelec2014/> [Accessed 28 August 2018].
- Shenker, J. (2012) "Egypt protests: New street battles erupt in Tahrir Square", *The Guardian*, 21 November 2012. Available at: <https://www.theguardian.com/world/2011/nov/21/egypt-protests-erupt-tahrir-square> [Accessed 3 September 2018].
- Shukrallah, S. (2012) "Brotherhood scrambles for consensus with opposition on draft constitution", *Ahram Online*, 6 November 2012. Available at: <http://english.ahram.org.eg/NewsContent/1/140/57232/Egypt/The-Balance-Sheet/Brotherhood-scrambles-for-consensus-with-oppositio.aspx> [Accessed 21 August 2018].

- Spencer, R. (2012) "Egypt's opposition rejects Mohammed Morsi compromise on constitution", *The Telegraph*, 9 December 2012. Available at: <https://www.telegraph.co.uk/news/worldnews/africaandindianocean/egypt/9733466/Egypt-s-opposition-rejects-Mohammed-Morsi-compromise-on-constitution.html> [Accessed 21 August 2018].
- Stengel, R., B. Ghosh and K. Vick (2012) "Transcript: TIME's interview with Egyptian President Mohamed Morsi", *TIME*, 28 November 2012. Available at: <http://world.time.com/2012/11/28/transcript-times-interview-with-egyptian-president-mohamed-morsi/> [Accessed 21 August 2018].
- Tarek, S., and H. Maher (2012) "Egypt's Constituent Assembly unveiled amid fears of Islamist dominance", *Ahram Online*, 13 June 2012. Available at: <http://english.ahram.org.eg/NewsContent/1/64/44716/Egypt/Politics-/Egypt-s-Constituent-Assembly-unveiled-amid-fears-ov.aspx> [Accessed 28 August 2018].
- The Observers (2012) "Public suicide attempt sparks angry riots in central Tunisia", *France 24*, 21 December 2012. Available at: <http://observers.france24.com/en/20101221-youth-public-suicide-attempt-sparks-angry-riots-sidi-bouazid-tunisia-poverty-bouazizi-immolation> [Accessed 3 September 2018].
- The Telegraph (2011) "Most US aid to Egypt goes to military", 29 January 2011. Available at: <https://www.telegraph.co.uk/finance/financetopics/8290133/Most-US-aid-to-Egypt-goes-to-military.html> [Accessed 22 August 2018].
- Thomson, D. (2011) "Tunisie: Assemblée constituante adopte la loi d'organisation des pouvoirs publics", *RFI Afrique*, 11 December 2011. Available at:

<http://www.rfi.fr/afrique/20111211-tunisie-assemblee-constituante-adopte-loi-organisation-pouvoirs-publics> [Accessed 8 September 2018].

Tunisia Live (2013) “NCA member Mohamed Brahmi Assassinated”, 25 July 2013.

Available at: <http://www.tunisia-live.net/2013/07/25/nca-member-mohamed-brahmi-assassinated/> [Accessed 12 May 2018].

UN (2009) “Guidance Note of the Secretary-General: United Nations Assistance to Constitution-making Processes”, April 2009. Available at:

[https://www.un.org/ruleoflaw/files/Guidance\\_Note\\_United\\_Nations\\_Assistance\\_to\\_Constitution-making\\_Processes\\_FINAL.pdf](https://www.un.org/ruleoflaw/files/Guidance_Note_United_Nations_Assistance_to_Constitution-making_Processes_FINAL.pdf) [Accessed 19 August 2018].

UNDP (2008) “Strategic Plan: 2008-2011, Accelerating global progress on human development”. Available at: [http://web.undp.org/execbrd/pdf/dp07-](http://web.undp.org/execbrd/pdf/dp07-43Rev1.pdf)

[43Rev1.pdf](http://web.undp.org/execbrd/pdf/dp07-43Rev1.pdf) [Accessed 12 August 2018].

UNDP (2013) “UNDP Strategic Plan: 2014-17”. Available at:

[http://www.undp.org/content/undp/en/home/librarypage/corporate/Changing\\_with\\_the\\_World\\_UNDP\\_Strategic\\_Plan\\_2014\\_17.html](http://www.undp.org/content/undp/en/home/librarypage/corporate/Changing_with_the_World_UNDP_Strategic_Plan_2014_17.html) [Accessed 12 August 2018].

UNDP (2015) “UNDP Guidance Note on Constitution-Making Support”, 5 February 2015. Available at:

[http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/parliamentary\\_development/GuidanceNote\\_ConstitutionMaking\\_Support.html](http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/parliamentary_development/GuidanceNote_ConstitutionMaking_Support.html) [Accessed 12 August 2018].

UNDP (n.d.) “Democratic governance and peacebuilding”. Available at:

<http://www.undp.org/content/undp/en/home/democratic-governance-and-peacebuilding/>

[peacebuilding/inclusive-political-processes/constitutional-reform.html](http://peacebuilding/inclusive-political-processes/constitutional-reform.html)

[Accessed 12 August 2018].

University of Cape Town (n.d.). “Staff. Christina Murray”. Available at:

<http://www.publiclaw.uct.ac.za/pbl/staff/cmurray> [Accessed 12 August 2018].

Walsh, D. (2017) “Why was an Italian graduate student tortured and murdered in Egypt? The strange twists in the case of Giulio Regeni’s disappearance in Cairo”, *New York Times*, 15 August 2017. Available at:

<https://www.nytimes.com/2017/08/15/magazine/giulio-regeni-italian-graduate-student-tortured-murdered-egypt.html> [Accessed 22 August 2018].

Weslaty, L. (2012) “Le bloc démocratique, deuxième force à l’Assemblée Constituante après Ennahda”, *Nawaat*, 24 December 2012. Available at:

<https://nawaat.org/portail/2012/12/24/le-bloc-democratique-deuxieme-force-a-lassemblee-constituante-apres-ennahda/> [Accessed 3 September 2018].

Weslaty, L. (2013) “Destitution de Morsi en Égypt: réactions mitigées en Tunisie”, *Counterpoints*, 6 July 2013. Available at:

<https://www.contrepoints.org/2013/07/06/130072-destitution-morsi-reactions-tunisie> [Accessed 28 August 2018].

World Bank (2011) “Data – Country groups”, *Databank*. Available at:

[http://econ.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20421402~menuPK:64133156~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html#Lower\\_middle\\_income](http://econ.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20421402~menuPK:64133156~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html#Lower_middle_income) [Accessed 10 April 2015].

World Bank (n.d.) “Population, total, Tunisia”, *Databank*. Available at:  
<https://data.worldbank.org/indicator/SP.POP.TOTL?locations=TN> [Accessed  
 22 August 2018].

World Bank (n.d.) “Population total, Egypt, Arab Republic”, *Databank*. Available  
 at: <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=EG>  
 [Accessed 22 August 2018].

## Secondary Literature

- Abul-Magd, Z. (2017) *Militarizing the Nation: The Army, Business, and the Revolution in Egypt*. New York: Columbia University Press.
- Abdulkaki, L. (2010) Democracy and the re-consolidation of authoritarian rule in Egypt. *Contemporary Arab Affairs* 1(3): 445-63.
- Adeney, K. (2007) *Federalism and Ethnic Conflict Regulation in India and Pakistan*. New York: Palgrave Macmillan.
- Al-Ali, Z. (2012) Egypt’s draft constitution: an analysis. *Open Democracy*, 8 November 2012. Available at: <https://www.opendemocracy.net/zaid-al-ali/egypts-draft-constitution-analysis> [Accessed 21 August 2018].
- al-Anani, K. and M. Malik (2013) Pious Way to Politics: The Rise of Political Salafism in Post-Mubarak Egypt. *Digest of Middle East Studies* 22(1): 57-73.
- Albrecht, H. (ed.) (2010) *Contentious Politics in the Middle East: Political Opposition under Authoritarianism*. Gainesville: University Press of Florida.
- Almond, G.A., and S. Verba (1963) *The Civic Culture: Political Attitudes and Democracy in Five Nations*. Newbury Park: Sage Publications.

- Ashour, O. (2009) *The De-Radicalization of Jihadists: Transforming Armed Islamic Movements*. New York: Routledge.
- Auf, Y. (2012) The system of government in Egypt's draft constitution. *Atlantic Council*, 13 September 2012. Available at:  
<http://www.atlanticcouncil.org/blogs/menasource/the-system-of-government-in-egypt-s-draft-constitution> [Accessed 21 August 2018].
- Bâli, A.Ü. and H. Lerner (eds.) (2017) *Constitution Writing, Religion, and Democracy*. Cambridge: Cambridge University Press.
- Baraket, H. and O. Belhassine (2016) *Ces nouveaux mots qui font la Tunisie*. Tunis: Cérès éditions.
- Beach, D. and R.B. Pedersen (2016) *Causal Case Study Methods. Foundations and Guidelines for Comparing, Matching and Tracing*. Ann Arbor: University of Michigan Press.
- Beissinger, M.R., A.A. Jamal, and K. Mazur (2015) Explaining Divergent Revolution Coalitions: Regime strategies and the structure of participation in the Tunisian and Egyptian revolutions. *Comparative Politics* 48(1): 1-21.
- Bellin, E. (2004) Robustness of Authoritarianism in the Middle East: Exceptionalism in Comparative Perspective. In *Comparative Politics* 34(2): 139-157.
- Bellin, E. (2012) Reconsidering the Robustness of Authoritarianism in the Middle East: Lessons from the Arab Spring. *Comparative Politics* 44(2): 127-149.
- Bellin, E. (2013) Drivers of Democracy: Lessons from Tunisia. Brandeis University *Middle East Brief* 75.
- Ben Achour, R. and S. Ben Achour (2012) La transition démocratique en Tunisie: entre légalité constitutionnelle et légitimité révolutionnaire. *Revue française de droit constitutionnel* 4(92): 715-732.



- Benoit, K., and J.W. Schiemann (2001) Institutional Choice in New Democracies: Bargaining over Hungary's 1989 Electoral Law. *Journal of Theoretical Politics* 13 (2): 153–182.
- Birch, S. (2003) *Electoral Systems and Political Transformation in Post-Communist Europe*. New York: Palgrave Macmillan.
- Birch, S., and F. Millard (eds.) (2002) *Embodying Democracy: Electoral System Design in Post-Communist Europe*. Basingstoke: Palgrave Macmillan.
- Böckenförde, M., Hedling, N. and Wahiu, W. (2011) *A Practical Guide to Constitution Building*. Stockholm: International Institute for Democracy and Electoral Assistance. Available at:  
[http://www.constitutionnet.org/sites/default/files/2017-07/A-practical-guide-to-constitution-building\\_0.pdf](http://www.constitutionnet.org/sites/default/files/2017-07/A-practical-guide-to-constitution-building_0.pdf) [Accessed on 2 October 2017].
- Bonime-Blanc, A. (2013) *Spain's Transition to Democracy: The Politics of Constitution-making*. Third Edition. New York: El Torcal Press.
- Brandt, M., Cottrell, J., Ghai, Y. and Regan, A. (2011) *Constitution-Making and Reform: Options for the Process*. Switzerland: Interpeace. Available at:  
[http://www.interpeace.org/wp-content/uploads/2011/09/2011\\_11\\_Constitution-Making\\_Handbook\\_English.pdf](http://www.interpeace.org/wp-content/uploads/2011/09/2011_11_Constitution-Making_Handbook_English.pdf) [Accessed on 2 October 2017].
- Bratton, M., and N. Van de Walle (1997) *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*. Cambridge: Cambridge University Press.
- British Academy (2017) *Navigating Inclusion in Peace Settlements: Human Rights and the Creation of Common Good*. June 2017. London: British Academy. Available at:

[https://www.britac.ac.uk/sites/default/files/BRIJ5395\\_Peacebuilding\\_final\\_web.pdf](https://www.britac.ac.uk/sites/default/files/BRIJ5395_Peacebuilding_final_web.pdf) [Accessed 20 September 2018].

Brody-Barre, A.G. (2013) The Impact of Political Parties and Coalition Building on Tunisia's Democratic Future. *The Journal of North African Studies* 18(2): 211-30.

Brown, N.J. (2008) Reason, Interest, Rationality, and Passion in Constitution Drafting. *Perspectives on Politics* 6(4): 675-89.

Brown, N.J. (2011a) *Constitutional Rebirth. Tunisia and Egypt Reconstruct Themselves*. UNDP, 12 August 2011. Available at: [http://www.constitutionnet.org/sites/default/files/constitutional\\_rebirth\\_tunisia\\_and\\_egypt\\_reconstruct\\_themselves.pdf](http://www.constitutionnet.org/sites/default/files/constitutional_rebirth_tunisia_and_egypt_reconstruct_themselves.pdf) [Accessed 20 September 2018].

Brown, N.J. (2011b) "Egypt's Constitutional Ghosts", *Carnegie Endowment for International Peace*, 15 February 2011. Available at: <http://carnegieendowment.org/2011/02/15/egypt-s-constitutional-ghosts/930> [Accessed 12 August 2018].

Brown, N.J. (2012a) Egypt and Islamic Sharia: A guide for the perplexed. *Carnegie Endowment for International Peace*, 15 May 2012. Available at: <http://carnegieendowment.org/2012/05/15/egypt-and-islamic-sharia-guide-for-perplexed-pub-48119> [Accessed 21 August 2018].

Brown, N.J. (2012b) "Egypt's constitutional racers stagger towards the final lap", *Carnegie Endowment for International Peace*, 1 October 2012. Available at: <http://carnegieendowment.org/2012/10/01/egypt-s-constitutional-racers-stagger-toward-final-lap-pub-49530> [Accessed 22 July 2016].

- Brown, N.J. (2013a) *Egypt: A Constitutional Court in an Unconstitutional Setting*.  
In: New York University, School of Law, Constitutional Transitions and  
Global Comparative Law Colloquium. New York, 23 October 2013.
- Brown, N.J. (2013b) Egypt's Failed Transition. *Journal of Democracy* 24(4): 45-58.
- Brown, N.J. (2017) Islam and Constitutionalism in the Arab World: The Puzzling  
Course of Islamic Inflation. In: A.Ü. Bâli and H. Lerner (eds.) *Constitution  
Writing, Religion, and Democracy*. Cambridge: Cambridge University Press.
- Brown, N.J. and A. Hamzawy (2010) *Between Religion and Politics*. Washington:  
Carnegie Endowment for International Peace.
- Brownlee, J., T. Masoud, and A. Reynolds (2015) *The Arab Spring. Pathways of  
Repression and Reform*. Oxford: Oxford University Press.
- Brumberg, D. (2013) Transforming the Arab World's Protection Racket Politics.  
*Journal of Democracy* 24(3): 88-103.
- Carey, J.M. (2009) Does It Matter How a Constitution is Created? In: Z. Barany and  
R.G. Moser (eds.) *Is Democracy Exportable?* Cambridge: Cambridge  
University Press, pp. 155-77.
- Carey, J.M. (2013) *Electoral Formula and the Tunisian Constituent Assembly*.  
Unpublished paper, 9 May 2013. Available at: [https://cpb-us-  
e1.wpmucdn.com/sites.dartmouth.edu/dist/2/109/files/2013/02/Tunisia-  
Electoral-Formula-Carey-May-2013-reduced.pdf](https://cpb-us-e1.wpmucdn.com/sites.dartmouth.edu/dist/2/109/files/2013/02/Tunisia-Electoral-Formula-Carey-May-2013-reduced.pdf) [Accessed 18 September  
2018].
- Carey, J.M., and A.S. Reynolds (2011) The Impact of Election Systems. In *Journal  
of Democracy* 22(4): 36-47.

- Carey, J.M., T. Masoud, and A.S. Reynolds (2015) *Institutions as Causes and Effects: North African Electoral Systems during the Arab Spring*.  
Unpublished paper, 27 August 2017.
- Carothers, T. (2002) The End of the Transition Paradigm. *Journal of Democracy* 13(1): 5-21.
- Carter Center (2011) *National Constituent Assembly Elections*. Final Report.  
Available at:  
[https://www.cartercenter.org/resources/pdfs/news/peace\\_publications/election\\_reports/tunisia-final-oct2011.pdf](https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/tunisia-final-oct2011.pdf) [Accessed 18 September 2018].
- Carter Center (2012) *Presidential Elections in Egypt*. Final Report. Available at:  
[https://www.cartercenter.org/resources/pdfs/news/peace\\_publications/election\\_reports/egypt-final-presidential-elections-2012.pdf](https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/egypt-final-presidential-elections-2012.pdf) [Accessed 18 September 2018].
- Carter Center (2014) *The Constitution-making Process in Tunisia*. Final Report.  
Available at:  
[https://www.cartercenter.org/resources/pdfs/news/peace\\_publications/democracy/tunisia-constitution-making-process.pdf](https://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/tunisia-constitution-making-process.pdf) [Accessed 18 September 2018].
- Cheibub, J.A. (2007) *Presidentialism, Parliamentarism, and Democracy*.  
Cambridge: Cambridge University Press.
- Chouikha, L. and E. Gobe. (2015) *Histoire de la Tunisie depuis l'indépendance*.  
Paris: Éditions La Découverte.
- Collier, D. (2012) Within-case versus Cross-case Causal Analysis. In: G. Goertz and J. Mahoney (eds.) *A Tale of Two Cultures: Qualitative and Quantitative Research in the Social Sciences*. Princeton: Princeton University Press.

- Collier, D., and S. Levitsky (1996) Democracy with adjectives: Conceptual innovation in comparative research. Working paper, Kellogg Institute, August 1996.
- Collier, D., and S. Levitsky (1997) Democracy with adjectives: Conceptual innovation in comparative research. *World Politics* 49(3): 430-51.
- Collier, R. (1999) *Paths Towards Democracy: The working Class and Elites in Western Europe and Southern America*. Cambridge: Cambridge University Press.
- Colomer, J.M. (2004) *Handbook of Electoral System Choice*. Basingstoke: Palgrave Macmillan.
- Dahl, R.A. (1971) *Polyarchy: Participation and opposition*. London: Yale University Press.
- Diamond, L., F. Fukuyama, D.L. Horowitz, and M.F. Plattner (2014) Reconsidering the Transition Paradigm. *Journal of Democracy* 25(1): 86-100.
- Doorenspleet, R. (2005) *Democratic Transitions: Exploring the Structural Sources of the Fourth Wave*. Colorado: Lynne Rienner Publishers.
- Dot-Pouillard, N. (2013) *Tunisie: la révolution et ses passés*. Paris: L'Harmattan.
- DRI (2007) Assessment of the Electoral Framework: The Arab Republic of Egypt. The final report, *Democracy Reporting International*, April. Available at: [http://www.democracy-reporting.org/files/dri\\_egypt.pdf](http://www.democracy-reporting.org/files/dri_egypt.pdf) [Accessed 18 September 2018].
- DRI (2011) *Promoting Consensus: Constitution-making in Egypt, Tunisia, and Libya*. Democracy Reporting International, Briefing Paper No 19, 30 November 2011. Available at: <http://aceproject.org/ero->

[en/regions/mideast/EG/promoting-consensus-constitution-making-in-egypt/view](https://en.regions/mideast/EG/promoting-consensus-constitution-making-in-egypt/view) [Accessed 20 September 2018].

Droz-Vincent, P. (2007) From Political to Economic Actors: The Changing Role of Middle Eastern Armies. In: O. Schlumberger (ed.) *Debating Arab Authoritarianism: Dynamics and Durability in Nondemocratic Regimes*. California: Stanford University Press: 195–214.

Dunne, M. (2011) Egypt: Elections or Constitution First? *Carnegie Endowment for International Peace*, 21 June 2011. Available at: <http://carnegieendowment.org/2011/06/21/egypt-elections-or-constitution-first-pub-44744> [Accessed 18 September 2018].

Dunne, M. and A. Hamzawy (2017) *Egypt's Secular Political Parties: A Struggle for Identity and Independence*. March 2017. Washington: Carnegie Endowment for International Peace. Available at: [https://carnegieendowment.org/files/CP305\\_Dunne\\_and\\_Hamzawy\\_Parties\\_Final\\_Web.pdf](https://carnegieendowment.org/files/CP305_Dunne_and_Hamzawy_Parties_Final_Web.pdf) [Accessed 18 September 2018].

Ebrahim, H. and Miller, L.E. (2010) Creating the Birth Certificate of a New South Africa: Constitution Making after Apartheid. In: L.E. Miller (ed.) *Framing the State in Times of Transition: Case Studies in Constitution Making*. Washington: United States Institute of Peace, pp. 111-57.

Eisenstadt, T.A., Levan, C.A. and Maboudi, T. (2015) When Talk Trumps Text: The Democratizing Effects of Deliberation. *American Political Science Review* 109 (3): 592-612.

Eisenstadt, T.A., Levan, C.A. and Maboudi, T. (2017) *Constituents before Assembly: Participation, Deliberation, and Representation in the Crafting of New Constitutions*. Cambridge: Cambridge University Press.

- El Ghobashy, M. (2011) The Praxis of the Egyptian Revolution. *Middle East Report* 41(258).
- El-Shobaki, A. (2014) The Egyptian Constitution: Procedural Problems and a crisis of content. In: Á. Vasconcelos and G. Stang (eds.) *Constitutional Reform in Times of Transition*. Beirut: Arab Reform Initiative. Available at: <https://www.arab-reform.net/en/node/542> [Accessed 20 September 2018].
- Elgie, R. (1999) *Semi-presidentialism in Europe*. Oxford: Oxford University Press.
- Elgie, R. (2012) Exogenous political institutions? Constitutional choice in Postindependence Francophone Sub-Saharan Africa. *Political Research Quarterly* 65(4): 771-83.
- Elkins, Z., Ginsburg, T. and Melton, J. (2009) *The Endurance of National Constitutions*. Cambridge: Cambridge University Press.
- Elkins, Z., and T. Ginsburg (2013) *Can We Trust Legislators to Write Constitutions?* Paper prepared the conference “The Gap Between Parchment and Practice: Ambivalent Effects of Constitutions in Developing Countries”; May 28-29, American University.
- Elster, J. (1995) Forces and Mechanisms in the Constitution-Making Process. *Duke Law Journal* 45: 364-96.
- Elster, J. (2012) Optimal Design of a Constituent Assembly. In: H. Landemore and J. Elster (eds.) *Collective Wisdom: Principles and Mechanisms*. New York: Cambridge University Press.
- Elster, J., Offe, C. and Preuss, U.K. (1998) *Institutional Design in Post-Communist Societies. Rebuilding the Ship at Sea*. Cambridge: Cambridge University Press.

- Farouk, Y. (2013) *Writing the Constitution of the Egyptian Revolution: Between Social Contract and Political contracting (March 2011-July2013)*. Arab Reform Initiative. Available at: <http://www.arab-reform.net/en/node/537> [Accessed 2 October 2017].
- Frye, T. (1997) A Politics of Institutional Choice: Post-Communist Presidencies. *Comparative Political Studies* 30(5): 523-52.
- Galligan, D.J, and M. Versteeg (2013) *Social and Political Foundations of Constitutions*. New York: Cambridge University Press.
- Geisser, V. (2014) *Mustafa Ben Jaafar. Un si long chemin vers la démocratie*. Tunis: Nirvana.
- Geisser, V. and D. Perez (2016) De la difficulté à “faire parti” dans la Tunisie post-Ben Ali. *Confluences Méditerranée* 3(98): 21-44.
- George, A.L. and A. Bennet (2005) *Case Studies and Theory Development in Social Sciences*. London: MIT Press.
- Ghai, Y. and Galli, G. (2006) *Constitution Building Processes and Democratization*. Stockholm: International Institute for Democracy and Electoral Assistance. Available at: <https://www.idea.int/sites/default/files/publications/constitution-building-processes-and-democratization.pdf> [Accessed on 2 October 2017].
- Ginsburg, T., Elkins, Z. and Blount, J. (2009) Does the Process of Constitution-Making Matter? *Annual Review of Law and Social Science* 5(December): 201-23.
- Ginsburg, T. and Aziz, H. (2014) What can constitutions do? The Afghan case. *Journal of Democracy* 25(1): 116-30.



- Gluck, J. and M. Brandt (2015) *Participatory and Inclusive Constitution Making. Giving Voice to the Demands of Citizens in the Wake of the Arab Spring*. Washington: United States Institute of Peace, Peaceworks, January 2015. Available at: <https://www.usip.org/sites/default/files/PW105-Participatory-and-Inclusive-Constitution-Making.pdf> [Accessed 20 September 2018].
- Gobe, E. (2012) Tunisie an I: les chantiers de la transition. *L'Année du Maghreb* VII(2012): 433-454.
- Gobe, E. (2016) Système électoral et révolution: la voie Tunisienne. *Pouvoirs* 1(156): 71-82.
- Gobe, E. and L. Chouikha (2014) La Tunisie politique en 2013: de la bipolarisation idéologique au “consensus constitutionnel”? *L'Année du Maghreb* 11: 301-322.
- Gobe, E. and L. Chouikha (2015) La Tunisie de la constitution aux élections: La fin de la transition politique? *L'Année du Maghreb* 13: 261-82.
- Hamad, M. (2012) The Constitutional Challenges in Post-Mubarak Egypt. *Insight Turkey* 12(1): 51-69. Available at: [http://file.insightturkey.com/Files/Pdf/insight\\_turkey\\_vol\\_14\\_1\\_2012\\_hamad.pdf](http://file.insightturkey.com/Files/Pdf/insight_turkey_vol_14_1_2012_hamad.pdf) [accessed 22 July 2016].
- Hart, V. (2001) Constitution-making and the Transformation of Conflict. *Peace & Change* 26(2): 153-76.
- Hart, V. (2003) *Democratic Constitution Making*. Washington, DC: United States Institute of Peace. Available at: [http://www.peacemaker.un.org/sites/peacemaker.un.org/files/DemocraticConstitutionMaking\\_USIP2003.pdf](http://www.peacemaker.un.org/sites/peacemaker.un.org/files/DemocraticConstitutionMaking_USIP2003.pdf) [Accessed on 2 October 2017].

- Hassan, M. (2013) Elections of the People's Assembly, Egypt 2011/12. *Electoral Studies* 32 (2): 370–374.
- Haugbølle, R.H. and F. Cavatorta (2011) Will the Real Opposition Please Stand Up? Opposition Coordination Failures under Authoritarian Constraints. *British Journal of Middle Eastern Studies* 38(3): 323-41.
- Haugbølle, R.H., A. Ghali, H. Yousfi, L.Limam, and N.G. Mollerup (2017) *Tunisia's 2013 National Dialogue. Political Crisis Management*. National Dialogue Handbook Case Study. Berlin: Berghof Foundation.
- Helmke, G., and S. Levitsky (2006) *Informal Institutions and Democracy: Lessons from Latin America*. Baltimore: The Johns Hopkins University Press.
- Higley, J. and Gunther, R. (eds.) (1992) *Elites and Democratic Consolidation in Latin America and Southern Europe*. Cambridge: Cambridge University Press.
- Hill, P. (2014) 'The Civil' and 'the Secular' in Contemporary Arab Politics. *Muftah*, 21 November 2014. Available at: <https://muftah.org/the-civil-and-the-secular-in-contemporary-arab-politics/#.W4-DEq2B2lM> [Accessed 5 September 2018].
- Hmed, C. (2011) "Le peuple veut la chute du régime" Situations et issues révolutionnaires lors des occupations de la place de la Kasbah à Tunis, 2011. *Actes de la recherche en sciences sociales* 1(211-212): 72-91.
- Honwana, A. (2013) *Youth and the Revolution in Tunisia*. New York: Zed Books.
- Horowitz, D.L. (1991) *Democratic South Africa: Constitutional Engineering in a Divided Society*. Berkeley: University of California Press.

- Horowitz, D.L. (2002) Constitutional Design: Proposals and Processes. In A. Reynolds (ed.) *The Architecture of Democracy: Conflict Design, Conflict Management, and Democracy*. New York: Oxford University Press.
- Horowitz, D.L. (2008) Conciliatory institutions and constitutional processes in post-conflict states. *William and Marry Law Review* 49: 1213-48.
- Horowitz, D.L. (2013) *Constitutional Change and Democracy in Indonesia*. New York: Cambridge University Press.
- Hulsman, C. (ed.) (2013) *The Development of Egypt's Constitution: Analysis, Assessment, and Sorting through the Rhetoric*. 2 May 2013, Cairo: Arab West Report. Available at: <https://www.arabwestreport.info/sites/default/files/pdfs/AWRpapers/paper45.pdf> [Accessed 20 September 2018].
- Huntington, S. (1968) *Political Order in Changing Societies*. New Haven: Yale University Press.
- Hyden, G. and D. Venter (eds.) (2001) *Constitution-making and Democratization in Africa*. Pretoria: Africa Institute of South Africa.
- ICG (2011) *Popular Protests in North Africa and the Middle East (IV): Tunisia's Way*. International Crisis Group, Middle East/North Africa Report N°106, 28 April 2011. Available at: <https://www.crisisgroup.org/middle-east-north-africa/north-africa/tunisia/popular-protests-north-africa-and-middle-east-iv-tunisia-s-way> [Accessed 18 September 2018].
- Inglehart, R. (1997) *Modernization and Postmodernization: Cultural, Economic, and Political Change in 43 Societies*. Chichester: Princeton University Press.
- Jung, J.K., and C.J. Deering (2015) Constitutional Choices: Uncertainty and

- Institutional Design in Democratising Nations. *International Political Science Review* 36(1): 60-77.
- Karl, T.L. (1990) Dilemmas of Democratization in Latin America. *Comparative Politics* 23(1): 1-21.
- Karpov, A. (2008) *Measurement of Disproportionality in Proportional Representation Systems*. *Mathematical and Computer Modelling* 48(9-10): 1421-38.
- Kassem, M. (2004) *Egyptian Politics: The Dynamics of Authoritarian Rule*. Colorado: Lynne Rienner Publishers, Inc.
- Kischelt, H., Z. Mansfeldova, R. Markowski, and G. Toka (1999) *Post-communist Party Systems: Competition, Representation, and Inter-party cooperation*. Cambridge: Cambridge University Press.
- Lancaster, K. (2016) Confidentiality, Anonymity, and Power Relations in Elite Interviewing: Conducting Qualitative Policy Research in a Politicised Domain. *International Journal of Social Research Methodology* 20(1): 93-103.
- Landman, T. (2017) *Issues and Methods in Comparative Politics*. An Introduction. London: Routledge.
- LeBas, A. (2011) *From Protests to Parties: Party-Building and Democratization in Africa*. Oxford: Oxford University Press.
- Lerner, H. (2011) *Making Constitutions in Deeply Divided Societies*. Cambridge: Cambridge University Press.
- Lijphart, A. (1977) *Democracy in Plural Societies: A Comparative Exploration*. London: Yale University Press.

- Lijphart, A. (1985) *Power-sharing in South Africa*. Berkeley: Institute of International Studies, University of California.
- Lijphart, A. (1992) Democratization and Constitutional Choices in Czecho-Slovakia, Hungary and Poland 1989-92. *Journal of Theoretical Politics* 4(2): 207-223.
- Lijphart, A. (2012) *Patterns of Democracy: Government forms and performance in thirty-six countries*. Second Edition. London: Yale University Press.
- Linz, J.J. (1990) The Perils of Presidentialism. *Journal of Democracy* 1(1): 51-69.
- Linz, J.J. and Stepan, A. (1996) *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*. Baltimore: The John Hopkins University Press.
- Lipset, S.M. (1959) Some Social Requisites of Democracy: Economic Development and Political Legitimacy. *The American Political Science Review* 53(1).
- Lombardi, C., and N.J. Brown (2012) Islam in Egypt's new constitution. *Foreign Policy*, 13 December 2012. Available at:  
<https://foreignpolicy.com/2012/12/13/islam-in-egypts-new-constitution/>  
 [Accessed 21 August 2018].
- Lowndes, V., and M. Roberts (2013) *Why Institutions Matter. The New Institutionalism in Political Science*. Basingstoke: Palgrave Macmillan.
- Ludsin, H. (2011) Peacemaking and Constitution-drafting: A Dysfunctional Marriage. *University of Pennsylvania Journal of International Law* 33(1): 239-309.
- Maboudi, T. and G.P. Nadi (2016). Crowdsourcing the Egyptian Constitution. Social Media, Elites, and the Populace. *Political Research Quarterly* 69(4): 716-31.

- Mahoney, J. and R. Snyder (1999) Rethinking Agency and Structure in the Study of Regime Change. *Studies in Comparative International Development* 34: 3-32.
- Mainwaring, S. and M. Shugart (1997) Juan Linz, Presidentialism, and Democracy: A Critical Appraisal. *Comparative Politics* 29(4): 449-71.
- Marks, M.L. (2014) *Convince, Coerce, or Compromise? Ennahda's Approach to Tunisia's Constitution*. Analysis Paper (10), February 2014, Washington: Brookings Doha Center.
- Marks, M. (2015) How Egypt's Coup Really Affected Tunisia's Islamists. *Washington Post*, Monkey Cage, 16 March 2015. Available at: [https://www.washingtonpost.com/news/monkey-cage/wp/2015/03/16/how-egypts-coup-really-affected-tunisias-islamists/?utm\\_term=.5eca1608d3e9](https://www.washingtonpost.com/news/monkey-cage/wp/2015/03/16/how-egypts-coup-really-affected-tunisias-islamists/?utm_term=.5eca1608d3e9) [Accessed 20 September 2018].
- Marshall, S. and J. Stacher. (2012) Egypt's Generals and Transnational Capital. *Middle East Report* 42 (262).
- Marzouki, N. (2015) Tunisia's Rotten Compromise. *Middle East Research and Information Project*, 10 July 2015. Available at: <https://www.merip.org/mero/mero071015> [Accessed 20 September 2018].
- Marzouki, N. (2017) Dancing by the Cliff. In: A.Ü. Bâli and H. Lerner (eds.) *Constitution Writing, Religion, and Democracy*. Cambridge: Cambridge University Press.
- Masoud, T. (2014) *Counting Islam: Religion, Class, and Elections in Egypt*. Cambridge: Cambridge University Press.
- Mikecz, R. (2012) Interviewing Elites: Addressing Methodological Issues. *Qualitative Inquiry* 18(6): 482-93.

- Miller, L.E. (eds.) (2010) *Framing the State in Times of Transition: Case Studies in Constitution Making*. Washington: United States Institute of Peace.
- Moehler, D.C. (2006) Participation and the Support for Constitution in Uganda. *The Journal of Modern African Studies* 44(2): 275-308.
- Moehler, D.C. (2008) *Distrusting Democrats. Outcomes of Participatory Constitution Making*. Ann Arbor: The University of Michigan Press.
- Møller, J., and S. Skaaning (2013) *Democracy and Democratization in Comparative Perspective: Conceptions, Conjunctures, Causes and Consequences*. Oxon: Routledge.
- Moore, B. Jr. (1969) *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of Modern World*. Harmondsworth: Penguin.
- Morris, Z.S. (2009) The Truth about Interviewing Elites. *Politics* 29(3): 209-17.
- Moustafa, T. (2012) *Drafting Egypt's Constitution: Can a New Legal Framework Revive a Flawed Transition?* Brookings Doha Center – Stanford Project on Arab Transitions. Paper Series 1, March 2012.
- M'Rad, H. (ed.) (2015) *Le Dialogue National en Tunisie*. Tunis: Nirvana.
- Munck, G.L. (2001) The regime question: Theory building in democracy studies. *World Politics* 54 (October): 119-44.
- Munck, G.L., and C.S. Leff (1997) Modes of Transition and Democratization. South America and Eastern Europe in Comparative Perspective. In *Comparative Politics* 29(3): 343-62.
- Negretto, G. (2009) Political Parties and Institutional Design: Explaining Constitutional Choice in Latin America. *British Journal of Political Science* 39: 117-39.

- O'Donnell, G. and Schmitter, P.C. (1986) *Transitions from Authoritarian Rule. Tentative Conclusions and Uncertain Democracies*. London: The John Hopkins University Press.
- Özbudun, E. and Ö.F. Gençkaya (2009) *Democratization and the Politics of Constitution-making in Turkey*. Budapest: CEU University Press.
- Pepinsky, T. (2014) The Institutional Turn in Comparative Authoritarianism. *British Journal of Political Science* 44(3): 631-53.
- Perez, D. (2016) Becoming a Decision-maker in the Assembly of Post-revolutionary Tunisia. *Middle East Law and Governance* 8(2016): 228-49.
- Pickard, D. (2014) "Voting on Tunisian Constitution", *Atlantic Council*, 14 January 2014. Available at: <http://www.atlanticcouncil.org/blogs/menasource/voting-on-the-tunisian-constitution> [Accessed 22 July 2016].
- Plattner, M.F. (2014) The end of transition era? *Journal of Democracy* 25(3): 5-16.
- Pratt, N. (2015) After the 25 January Revolution. Democracy or authoritarianism in Egypt? In: R. Abu-El-Fadl (ed.) *Revolutionary Egypt: Connecting Domestic and International Struggles*. Hoboken: Taylor and Francis.
- Preysing, D. (2015) *Transitional Justice in Post-revolutionary Tunisia (2011-13): How the Past Shapes the Future*. Berlin: Springer VS.
- Przeworski, A. (1988) Democracy as a contingent outcome of conflicts. In: J. Elster and R. Slagstad (eds.) *Constitutionalism and Democracy*. Cambridge: Cambridge University Press, pp. 59-80.
- Przeworski, A. (1991) *Democracy and Market: Political and Economic Reforms in Eastern Europe and Latin America*. Cambridge: Cambridge University Press.
- Przeworski, A. (2004) Institutions Matter? *Government and Opposition* 39(4): 527-40.



- Reilly, B. (2001) *Democracy in Divided Societies. Electoral Engineering for Conflict Management*. Cambridge: Cambridge University Press.
- Renwick, A. (2010) *The Politics of Electoral Reform. Changing the Rules of Democracy*. Cambridge: Cambridge University Press.
- Renwick, A. (2011) The Role of Dissent Values in Institutional Choice. 1989 in Comparative Perspective. *East European Politics and Societies: and Cultures* 25(2): 296-317.
- Renwick, A. (2015) “Electoral disproportionality: What is it and how should we measure it?” *Politics at Reading blog series*, 29 June 2015. Available at: <https://blogs.reading.ac.uk/readingpolitics/2015/06/29/electoral-disproportionality-what-is-it-and-how-should-we-measure-it/> [Accessed 22 April 2018].
- Revkin, M. and Y. Auf (2012) *Beyond the Ballot Box: Egypt’s Constitutional Challenge*. Issue brief, Atlantic Council, June 2012. Available at: [http://www.atlanticcouncil.org/images/files/publication\\_pdfs/51360/94969\\_ACUS\\_Egypt\\_Challenge\\_final-rev.pdf](http://www.atlanticcouncil.org/images/files/publication_pdfs/51360/94969_ACUS_Egypt_Challenge_final-rev.pdf) [accessed 22 July 2016].
- Reynolds, A. (1999) *Electoral Systems and Democratization in Southern Africa*. New York: Oxford University Press.
- Reynolds, A. (ed.) (2002) *The Architecture of Democracy: Conflict Design, Conflict Management, and Democracy*. New York: Oxford University Press.
- Reynolds, A. (2011) *Designing Democracy in Dangerous World*. Oxford: Oxford University Press.
- Riahi, M. (2016) La constitution: élaboration et contenu. *Pouvoirs* 1(156): 31-53.
- Rustow, D.A. (1970) Transitions to Democracy: Towards a Dynamic Model. *Comparative Politics* 2(3): 337-363.

- Saati, A. (2015) *The Participation Myth. Outcomes of Participatory Constitution Building Processes on Democracy*. Umeå: Umeå University, Department of Political Science.
- Sallam, H. (ed.) (2013) *Egypt's Parliamentary Elections. A Critical Guide to a Changing Political Arena*. Washington D. C.: Tadween Publishing.
- Samuels, K. (2006a) Post-conflict Peace-building and Constitution-making. *Chicago Journal of International Law* 6(2): 663-82.
- Samuels, K. (2006b) *Constitution Building Processes and Democratization: A Discussion of Twelve Case Studies*. Stockholm: International IDEA.
- Sartori, G. (1976) *Parties and Party Systems: A Framework for Analysis*. Cambridge: Cambridge University Press.
- Sartori, G. (1994) *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes*. Basingstoke: Macmillan.
- Schedler, A. (1998) What is democratic consolidation? *Journal of Democracy* 9(2): 91-107.
- Schedler, A. (2001) Taking uncertainty seriously: The blurred boundaries of democratic transition and consolidation. *Democratization* 8(4): 1-22.
- Schmitter, P.C. (2001) *Contrasting Approaches to Political Engineering: Constitutionalization & Democratization*. European University Institute. Available at: <<https://www.eui.eu/Documents/DepartmentsCentres/SPS/Profiles/Schmitter/PoliticalEngineering.pdf>> [Accessed on 2 October 2017].
- Schmitter, P.C., and T.L. Karl (1991) What Democracy Is... And Is Not. *Journal of Democracy* 2(3): 75-88.
- Schumpeter, J.A. (2012) *Capitalism, Socialism, and Democracy*. Oxon: Routledge.

- Shain, Y., and J.J. Linz (1995) *Between States. Interim Governments and Democratic Transitions*. New York: Cambridge University Press.
- Shehata, D. (2010) *Islamists and Secularists in Egypt: Opposition, conflict, and cooperation*. Oxon: Routledge.
- Shehata, D. (2011) The Fall of the Pharaoh: How Hosni Mubarak's Reign Came to an End. In: *The New Arab Revolt*. New York: Council on Foreign Relations: 137-48.
- Shokr, A. (2011) The 18 Days of Tahrir. *Middle East Report* 41(258).
- Shugart, M.S. (2005) Semi-Presidential Systems. Dual Executive and Mixed Authority Patterns. *French Politics* 3(3): 323-51.
- Shugart, M., and J.M. Carey (1992) *Presidents and Assemblies: Constitutional design and Electoral Dynamics*. Cambridge: Cambridge University.
- Shvetsova, O. (2003) Endogenous Selection of Institutions and Their Exogenous Effects. *Constitutional Political Economy* 14: 191-212.
- Sisk, T.D. (1995) Electoral System Choice in South Africa: Implications for Intergroup Moderation. *Nationalism and Ethnic Politics* 1(2): 178-204.
- Smith, K.E. (2006) Problematising Power Relations in 'Elite' Interviewing. *Geoforum* 37(4): 643-53.
- Stepan, A. (2012) Tunisia's Transition and the Twin Toleration. *Journal of Democracy* 23(2): 89-103.
- Stepan, A. and J.J. Linz (2013) *Democratization Theory and the Arab Spring*. *Journal of Democracy* 24(2): 15-30.
- Steuer, C. (2012) Les partis politiques égyptiens dans la révolution. *L'Année du Maghreb* VIII: 181-92.

- Steuer, C. and A. Blouët (2015) The Notions of Citizenship and the Civil State in the Egyptian Transition Process. *Middle East Law and Governance* 7(2): 236-56.
- Storm, L. (2014) Party Politics and the Prospects for Democracy in North Africa. London: Lynne Rienner Publishers.
- Stradiotto, G.A. and S. Guo (2010) Transitional modes of democratization and democratic outcomes. *International Journal on World Peace* 27(4): 5-40.
- Sweet Stone, A. (2014) Constitutions and Judicial Power. In: D. Caramani (ed.) *Comparative Politics*. Third Edition. Oxford: Oxford University Press.
- Tsebelis, G. (1990) *Nested Games: Rational Choice in Comparative Politics*. Oxford: University of California Press.
- Vennetzel, M. (2017) The party, the Gama'a and the Tanzim: the organizational dynamics of the Egyptian Muslim Brotherhood's post-2011 failure. *British Journal of Middle Eastern Studies* 44(2): 211-226.
- Wallis, J. (2014) *Constitution Making during State Building*. New York: Cambridge University Press.
- Widner, J. (2005) Constitution writing and conflict resolution. *The Round Table* 94(381): 503-18.
- Widner, J. (2008) Constitution Writing in Post-Conflict Settings: An Overview. *William and Mary Law Review* 49: 1513-37.
- Wolf, A. (2014) *Can Secular Parties Lead the New Tunisia?* April 2014. Washington: Carnegie Endowment for International Peace. Available at: [https://carnegieendowment.org/files/tunisia\\_secular\\_parties.pdf](https://carnegieendowment.org/files/tunisia_secular_parties.pdf) [Accessed 18 September 2018].

- Wolf, A. (2017a) 'Dégage RCD!' The Rise of Internal Dissent in Ben Ali's Constitutional Democratic Rally and the Tunisian Uprising. *Mediterranean Politics* 23(2): 245-64.
- Wolf, A. (2017b) *Political Islam in Tunisia. The History of Ennahda*. London: C. Hurst & Co.